

Vinay Avasthi Sahib Bhuvan Vani Trust Donations

**Bhatnagar's**

# The Societies Registration Act, 1860

*Revised by*

**VIJAY MALIK**

B.A., LL.B.

**EASTERN BOOK COMPANY**

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Commentaries on  
The Societies Registration  
Act, 1860

(together with States' Amendments)

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## **PREFACE TO THE THIRD EDITION**

Since the last publication of the book, the Societies Registration Act has undergone numerous amendments, in the principal Act as well as by way of States' amendments. The third-edition of the Book incorporates all these amendments and brings the book up-to-date. All the latest case-law has also been incorporated. An attempt has been made to retain the essential character of the book that has found welcome acceptance from its readers.

—VIJAY MALIK.



## **PREFACE TO THE FIRST EDITION**

The object of compiling this book is not merely to present, in a handy volume, the law of the registration of societies in India, but also to attempt at solutions of the many difficult questions that frequently arise in its practical application. The principles have been explained, as far as possible, in the light of the latest case-law and every endeavour has been made to bring the work up-to-date to all those interested in the working of the Act. Local amendments and modified provisions made by the various State Acts have been incorporated in the body of the commentary to enable the readers to get a ready reference.

I will consider myself highly rewarded if this work proves useful to those for whom it is intended.

—*J. P. Bhatnagar*

## ABBREVIATIONS EXPLAINED

- AC—Appeal Cases (English Reports).  
AIR—All India Reporter.  
ALJ—Allahabad Law Journal.  
All LR—Allahabad Law Reporter.  
Andh WR—Andhra Weekly Reporter.  
App Cas—Appeal Cases—1875-1890 (English Reports).  
AWN—Allahabad Weekly Notes.  
AWR—Allahabad Weekly Reporter.  
BR—Bihar Reports.  
Bom LR—Bombay Law Reporter.  
Ch—Chancery Division (English Reports).  
Ch App—Chancery Division, Appeal Cases (English Reports).  
Ch D—Law Reports, Chancery Division (English Reports).  
CLJ—Calcutta Law Journal.  
Cr LJ—Criminal Law Journal.  
CWN—Calcutta Weekly Notes.  
Digest—Digest (English Reports).  
Exch—Exchequer Reports (English Reports).  
Ex D—Law Reports, Exchequer Division (English Reports).  
FLJ—Federal Law Journal.  
HLC—House of Lords Cases (English Reports).  
IA—Indian Appeals (English Reports).  
IC—Indian Cases.  
ILR—Indian Law Reports.  
ITC—Income Tax Cases.  
ITR—Income Tax Reports.  
Ir LR—Irish Law Reports (English Reports).  
Jac & W—Jacob & Walker's Reports (English Reports).  
KB—King's Bench Law Reports (English Reports).  
K & J—Kay and Johnson's Report (English Reports).  
LJ Er—Law Journal, Exchequer (English Reports).  
LR Ch—Law Reports, Chancery Division (English Reports).

- LRQB—Law Reports, Queen's Bench (English Reports).
- LR Ch D—Law Reports, Chancery Divisions (English Reports).
- LT—Law Times (English Reports).
- LW—Law Weekly, Madras.
- MLJ—Madras Law Journal.
- MLT—Madras Law Times.
- MLW—Madras Law Weekly.
- M & W—Meeson and Welsby's Reports (English Reports).
- MWN—Madras Weekly Notes.
- NLJ—Nagpur Law Journal.
- NLR—Nagpur Law Report.
- OC—Oudh Cases.
- OWN—Oudh Weekly Notes.
- PLT—Patna Law Times.
- PLR—Punjab Law Reporter.
- PWR—Punjab Weekly Reporter.
- QB—Adolphus and Ellis' Queen's Bench Reports (English Reports).
- QBD—Law Reports, Queen's Bench Division (English Reports).
- RD—Revenue Divisions.
- SCJ—Supreme Court Journal.
- SCR—Supreme Court Reports.
- TLR—Times Law Reports (English Reports).
- TR—Terms Reports (English Reports).
- UPRD—Uttar Pradesh Revenue Decisions.
- Ves—Vesey's Reports (English Reports).
- WR—Weekly Reporter (English Reports).

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# THE SOCIETIES REGISTRATION ACT, 1860

(ACT No. XXI OF 1860)

[21st, May, 1860]

*An Act for the Registration of Literary, Scientific and Charitable Societies*

**Preamble**—Whereas it is expedient that provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, [the diffusion of political education,]<sup>1</sup> or for charitable purposes ;

It is enacted as follows :

## SYNOPSIS

- |                                      |                                     |
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| 1. English Law.                      | 8. Proviso.                         |
| 1-A. Origin.                         | 9. Punctuation.                     |
| 2. Preamble—Its scope and purpose.   | 10. Illustrations.                  |
| 3. Construction.                     | 11. Sections.                       |
| 4. Statement of Objects and Reasons. | 12. Precedents.                     |
| 5. Title.                            | 13. Reference to English Decisions. |
| 6. Headings and marginal notes.      | 14. Application of the Act.         |
| 7. Explanation.                      | 15. Local extent.                   |
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**1. English law—Meaning of friendly society**—Friendly societies form part of a main group of voluntary benefit thrift and provident societies. There is a close affinity in the early history and legislation relating to societies in this group. The expression 'friendly societies' is sometimes used in referring to all the societies registered under the Friendly Societies Act, 1896, but friendly societies are only one of the six classes of societies (Cattle Insurance Societies, Benevolent Societies, Working Men's Clubs, Old People's Home Societies, Specially Authorised Societies) which can be registered under that Act.

**Registered and unregistered societies**—Friendly societies may be registered or unregistered. While the permitted purposes of a registered friendly society are defined by statute, there is no legal definition of an unregistered friendly society. The first Act relating to friendly societies referred to societies of good fellowship formed for the purpose of raising by subscriptions of the

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1. *Ins.* by Act XXII of 1927.

members or by voluntary contributions a stock or fund for the mutual relief or maintenance of the members in old age, sickness and infirmity or for the relief of the widows and children of deceased members.

For the purposes of the Friendly Societies Acts, and, it is conceived, in other legislation where unregistered societies are expressly named or mention is made of friendly societies without reference to registration, an unregistered friendly society is a society whose purposes are substantially the same as those which entitle a friendly society to be registered under the Acts.

**Types of registered friendly societies**—There are several types of registered friendly societies. Many accumulate their funds by the contributions or levies paid by members and interest on investments, and use them only for the payment of benefits. Others, which are known as dividing societies and include State clubs and tontine societies, periodically, and generally annually, divide in cash among their members the balance of the funds remaining after all claims have been paid and provided for. In another form of dividing society there is no actual division, but at the end of the year shares in the balance remaining in the benefit fund are appropriated to members' accounts. The accumulations of these shares and interest are paid on death or on attaining a certain age or subject generally to forfeiture of one or more of the yearly accumulations on previous withdrawal. There is also the deposit society in which the member's contribution goes in part to a common fund and in part to a personal account from which he may withdraw. The sick benefit is paid partly from the common fund and partly from the members' deposits, and its extent is dependent on the amount a member has in his deposit account when he becomes ill. The moneys in the personal account are payable on death or in other events.

**Application of friendly societies legislation**—The enactments relating to friendly societies apply only to registered societies, except that the provisions imposing restrictions or insurances payable on the deaths of children under ten years of age and the provisions protecting the interest of persons serving in the reserve and auxiliary forces of the Crown apply both to registered and unregistered societies. Registration is voluntary except for collecting societies, and a class of society (called a "shop club" or "thrift fund") established for the benefit of workmen of certain employments compulsory membership of which is made a condition of employment.<sup>2</sup>

**1-A. Origin**—Besides the associations for commercial purposes, other associations, for literary, scientific and charitable

2. Halsburys' Laws of England, 3rd Edn., Vol. 18 at pp. 3, 4, 11, 12.



purposes are often formed with the progress of civilization. Since such associations may possess properties, movable and immovable, owned not by individual members of the association, but in common, there may arise a dispute between the members themselves or between the members and outsiders. To deal with such a dispute the association concerned must be recognised by law as an entity enabling it to sue and be sued. The present Act has come into existence to lay down a procedure for the registration of such associations or societies in order to give them the legal status of a corporation or a legal person. Like many other Indian enactments this Act has its origin in English law. Except its first four sections, it has been framed after the model of the English Literary and Scientific Institutions Act, 1854.

**2. Preamble—Its scope and purpose—**The preamble of a statute states the general object and intention of the Legislature in passing it, and, therefore, it is a good means of finding out its meaning. In cases where the enacting position of any statute is ambiguous or doubtful or produces in its ordinary meaning an absurdity or unreasonableness, the courts have to see the intention of the Legislature as embodied in its preamble.<sup>3</sup> Where the language and the object and scope of a statute are not open to doubt, the preamble cannot either restrict or extend the enacting part.<sup>4</sup> If the enacting part of a statute is not exactly co-extensive with the preamble, the former, if expressed in clear and unequivocal terms, overrides the latter; but if the phraseology of the section is ambiguous or doubtful, the preamble may, however, be referred to for resolving the ambiguity.<sup>5</sup> It is the primary duty of a court to give effect to the intention of the Legislature as is expressed in the words used by it. If the language employed is ambiguous, the interpretation that advances the object of the Act should be preferred to an interpretation that limits the fulfilment of that object.<sup>6</sup> In the case where the language of a statute admits two views, that view must not be adopted which leads to manifest public injustice, mischief or inconvenience.<sup>7</sup> Where a word has several meanings and it is doubtful which of these meanings is used in the body of the Act, the Court must look at the preamble to decide which of the several meanings attaching to the word is intended by the Legislature.<sup>8</sup>

3. *Shidvirappa v. Shivalingappa*, AIR 1951 Bom 137(FB).

4. *Powell v. Khempton Park Race Course Co.*, 1899 AC 143.

5. *Raj Mal v. Hernam Singh*, 104 IC 661; AIR 1928 Lah 35; *Secretary of State for India v. Maharaja of Babbili*, ILR 43 Mad 529; 46 IA 302 (PC).

6. *Mahmud Khan and Others v. Narain*, AIR 1949 All 210 (FB).

7. *Sukhnandan Bali and Others v. Suraj Bali and Others*, AIR 1951 All 119(FB).

8. *Manohar Lal v. Emperor*, AIR 1943 Lah 1.

It should be noted that the Court must not create or imagine an ambiguity in order to bring in the aid of preamble.<sup>9</sup>

The Act, as its preamble shows, has been enacted to make provisions for improving the legal conditions of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education, or for charitable purposes. It embodies the rules for the registration of these societies. Its preamble has been amended by Act XXII of 1927 and the words 'the diffusion of political education' have been inserted therein in order to bring within its ambit the increasing number of societies established for the purpose.

**3. Construction**—The proper course of construing a statute is, in the first instance, to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any consideration derived from the previous state of law; and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.<sup>10</sup> This principle has been acted upon by the Courts of India.<sup>11</sup> It is a well-settled rule of construction of statutes that the statutes should be construed according to the intent of the Legislature which passed them. If the words of the statute are in themselves precise and unambiguous, the words themselves alone do in such case best declare the intention of the Legislature. But if any doubt arises from the terms employed by the Legislature, it has always been held, a safe means of collecting the intention of the Legislature, to call in aid the ground and cause of making the statute.<sup>12</sup> A statute must be construed strictly and the burden lies on the State to show that the case clearly falls within the operation of the statute.<sup>13</sup> It should also be noted that in construing a statute the words used in it must first be given their ordinary, natural and proper meaning.<sup>14</sup>

Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute.<sup>15</sup> In order to ascertain true meaning of

9. *Janendra Nath v. Jadunath*, ILR (1938) 1 Cal 628; *Balkishan Harkarni Chand v. Mst. Jatanhari*, 1938 NLJ 168.
10. *Bank of England v. Vageliano*, (1891) AC 107, 144-145.
11. *Suraj Prasad v. Gulab Chand*, ILR 28 Cal 517; *Kondayya Chetti v. Narasimkulu Chetti*, ILR 20 Mad 97.
12. *Narain Swami v. Emperor*, AIR 1939 PC 47; *I. T. C. v. Pemsel*, (1891) AC 531.
13. *Whiteley v. Burns*, (1908) 1 KB 705.
14. *Hirjibhai v. I. T. C.*, (1958) 33 ITR 313.
15. *C. A. I. T. v. Keshab Chandra*, AIR 1950 SC 265.



the words used in an Act all the parts of the Act must be construed together to avoid inconsistencies.<sup>16</sup> The Court should try to adopt that view which will not make any of the provisions repugnant, that is, to try to harmonise the various provisions and not to lay down the law which cannot be said to have been the intention of the Legislature.<sup>17</sup> However, where self-conflicting provisions exist in the same enactment the later shall prevail.<sup>18</sup>

In construing a statute it is not permissible for the Court to suggest modifications of an Act involving entire recasting of its provisions. Such course is only open to the Legislature.<sup>19</sup>

As a rule, in construing an Act the Court has to bear in mind the scheme of the Act and the purpose for which the Act was passed. It is sometimes dangerous to construe the language of one Act having regard to the construction placed by the Court on the language of another Act.<sup>20</sup> The Supreme Court has clearly expressed that if the terms of the provisions in an Indian Act are plain and unambiguous the Court cannot have resort to the position in law as it obtained in England or in other foreign countries when the statute was enacted by the Legislature. Such recourse, however, would be permissible only if there was any latent or patent ambiguity and the Courts were required to show what was the true intent of the Legislature.<sup>21</sup>

*Ejusdem generis* is the rule of construction which must be applied with caution and must not be pushed too far. To invoke the application of this rule there must be a distinct genus or category and specific words must apply not to different objects of varying or widely different character but to something which can be called a class or a kind of objects. Where this is lacking the rule cannot apply.<sup>22</sup> This rule is intended to be applied on the established rule that the Legislature presumed to use the general words in a restricted sense.<sup>23</sup>

It is well-settled that in construing the provisions of a statute Courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must

16. *Raja Mohammad v. Dy. Commissioner, Sitapur*, 1956 ALJ 220 (FB): AIR 1956 All 453 (FB).
17. *Sukhdeo Singh v. Nirvachan Nirदेशक*, 1961 UPRD 179.
18. *Ibid.*
19. *I. T. C. v. Khotau Makanji*, AIR 1960 SC 1022.
20. *Anglo-French Drug Co. v. R. D. Tinaikar*, AIR 1959 Bom 21.
21. *S. T. O. v. Kanhaiya Lal Mokund Lal Saraf*, AIR 1959 SC 135.
22. *Bajoria Agency (P) Ltd. v. Dy. Iron and Steel Controller*, AIR 1963 Cal 355.
23. *Lilawati Bai v. State of Bombay*, AIR 1957 SC 521.

always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute.<sup>24</sup>

It may be noted that the debates in the Legislature made while enacting a statute, cannot be used as aid to the construction of that statute.<sup>25</sup>

**4. Statement of Objects and Reasons**—The Statement of Objects and Reasons of a statute are no aid to its interpretation, but they can be referred to for the limited purpose of ascertaining the conditions prevailing at the time the Bill was introduced and the purpose for which it was introduced.<sup>26</sup> Of course, a court cannot go into the Statement of Objects and Reasons for the purpose of limiting the scope of any statute or for the purpose of interpreting it, but where the Court has to find out what was the object of making the particular statute, it is entitled to look into the Statement of Objects and Reasons.<sup>27</sup>

**5. Title**—The title is a part of the statute itself, and therefore, it can be lawfully used for the purpose of interpreting the statute as a whole and for ascertaining its scope.<sup>28</sup> However, the full title of the statute must be taken into consideration and not the short title which is often chosen merely for convenience.<sup>29</sup>

**6. Headings and marginal notes**—The headings prefixed to sections or set of sections in the statutes are regarded as preambles to those sections.<sup>30</sup> Though they form no part of the sections, they are of some assistance, inasmuch as they show the drift of the section.<sup>31</sup>

The marginal notes to the section of an Act cannot be referred to for the purpose of construing the Act.<sup>32</sup> They can afford guidance to the construction of an enactment.<sup>33</sup> However, where the express provisions of the section point to the contrary,

24. *Siraj-ul-Haq-Khan v. The Sunni Central Board of Waqf*, U. P., AIR 1959 SC 158.

25. *Ram Pratap v. State of Punjab*, AIR 1963 Punj 354.

26. *Bhagat Govind Singh v. State of Punjab*, AIR 1963 Punj 319.

27. *M. P. Mineral Industries Assn. v. R. P. F. Commissioner*, AIR 1959 MP 60.

28. *Vocher and Sons Ltd. v. London Society of Compositors*, 1913 AC 107.

29. *Ibid*; See also *Devendra Narain v. Jagmola Narain*, 167 IC 615.

30. *Eastern Countries, etc. Rly. Cos. v. Francis Marriage*, (1862), 9 MLC 32; *Debi Das v. Maharaj Rup Chand*, AIR 1927 All 593.

31. *Bushell v. Hammond*, (1904) 73 LJKB 1005.

32. *Thakurain Balraj Kunwar v. Ras Jagatpal Singh*, ILR 26 All 303: 31 IA 132 (PC).

33. *Sharaf Shah Khan and Others v. State of Andhra Pradesh*, AIR 1963 AP 314.

the marginal notes may usefully be referred to if their reference is not in any way repugnant to the provisions of the section.<sup>34</sup>

**7. Explanation.**—An explanation does not enlarge the scope of the original section which it seeks to explain.<sup>35</sup> Explanation added to a section is retrospective in effect.<sup>36</sup> But it should be noted that it is not retrospective in the sense that it applies to the suits already concluded.<sup>37</sup>

**8. Proviso**—Proviso is a part of the section and its proper function is to except and deal with a case which would otherwise fall within the general language of the main section and its effect is confined to that case.<sup>38</sup> It may usefully be referred to for construing the enactment.<sup>39</sup> It operates as an exception to the matter which the main section propounds.<sup>40</sup>

**9. Punctuation**—Punctuation is considered as a part of the enactment in India, and, therefore, it should not be disregarded.<sup>41</sup> It affords some guidance to ascertain the intention of an enactment in cases where it is uncertain.<sup>42</sup>

**10. Illustrations**—Illustrations appended to an enactment are also a part of the enactment.<sup>43</sup> They can, therefore, be used for the construction of a particular section.<sup>44</sup> However, if the meaning of the section is clear, the illustrations to it cannot be used to control its meaning.<sup>45</sup>

**11. Sections**—Sections are the enacting part of a statute. They are substantive enactments in themselves. They should be strictly construed in their context. If any one contends that a certain section should not be construed literally, he must be able to show that there is some other section which cuts down its meaning or that the section is itself repugnant to the general purview of the statute.<sup>46</sup>

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34. *Ram Kripal v. Sri Krishna Deo Pratap Singh*, 1948 ALJ (HC) 11: AIR 1947 All 798.
35. *Ram Sunder v. Shyam Sunder Lal*, AIR 1951 All 155(FB).
36. *Chandrika Singh and Others v. The Board of Revenue*, 1955 ALJ 883(HC).
37. *Matroo v. Roshan Singh*, 1955 ALJ 273(Rev).
38. *Madras and Southern Maharatra Rly. Co. v. Bezawada Municipality*, AIR 1944 PC 71.
39. *Mahadeb Das v. Chairman of Howrah Municipality*, ILR 37 Cal 698; see also Sutherland's Statutory Constructions, 3rd Ed., Vol. II, pp. 474-475.
40. *Ibid.*
41. *Taylor v. Charles Bleach*, ILR 39 Bom 182.
42. *Gopalan v. State*, AIR 1950 SC 27.
43. *Balamall v. Ahmad Shah*, 124 PR 1918 (PC): 48 IC 1.
44. *Mohammed Syedol Ariffin v. Yooth Ooi Cark*, 43 IA 256: 39 IC 401.
45. *Sajidannissa Bibi v. Hidayat Husain*, 80 IC 896: AIR 1924 All 748.
46. *Nath v. Templin*, (1881) 8 QBD 247, 253.



**12. Precedents**—The object of reference to precedent is to clarify the law for the guidance of the lower Court.<sup>47</sup> However, decisions on questions of fact cannot be cited as precedents governing the decision of other cases.<sup>48</sup> It may be noted that even one Single Judge ruling of the High Court should be followed in preference to a later Division Bench ruling of another High Court.<sup>49</sup> The Supreme Court is not precluded from considering the correctness of the decision of the High Court notwithstanding its having held the field for over forty years without question.<sup>50</sup> No judgment except that of the Supreme Court is binding on High Court Judges.<sup>51</sup> The position of Privy Council decisions has been changed after the year 1950. Before 1950 the law laid down by the Privy Council was the law of the country but after 1950 the Privy Council's decisions are only of a persuasive authority.<sup>52</sup>

**13. Reference to English decisions**—Where an Act is mainly based on English law, a reference to English decision is not only permissible but useful. It is a rule of prudence that a reference to English decision is justified where the language used in a statute is of doubtful import,<sup>53</sup> or where the principle laid down in the English case does not depend upon any peculiarity in the English law,<sup>54</sup> or when a point arises for which there is no positive solution in the Act itself.<sup>55</sup> English Courts form a most valuable guide to the Courts in India, and, therefore, it has been held that English decisions should be considered as an authority.<sup>56</sup>

**14. Application of the Act**—The Act is not applicable only to societies of public or charitable nature but it is also applicable to private societies established for the purposes defined in the Act. The various provisions in the Act itself make it clear that the Act applies to all societies formed prior to the commencement of the Act and to be formed after the commencement of the Act in order to give them the legal status of a corporation for carrying out the purposes for which they were formed or were to be formed.<sup>57</sup>

47. *Sri Ram Verma v. State*, AIR 1956 All 466(FB) : 1956 Cr LJ 959.

48. *Prakash Chandra v. State of U. P.*, AIR 1960 SC 195.

49. *Kamla v. State*, AIR 1953 All 523(DB) : 1953 Cr LJ 1255.

50. *Abdul Shakoor Saheb v. Arji Papa Rao and Others*, AIR 1963 SC 1150.

51. *Shree Madan Singhji Saheb of Kutch v. State*, AIR 1963 Guj 175.

52. *Jubilee Mills Ltd. v. C. I. T.*, AIR 1959 Bom 51.

53. *Bank of England v. Vagliano*, (1891) AC 107.

54. *Nandi Singh v. Sita Ram*, 16 IA 44(PC).

55. *Emperor v. Ashootosh Chakerverty*, ILR 4 Cal 483, 491(FB).

56. *Emperor v. Damapala*, ILR (1937) 14 Rang 666; *Yusuf v. State*, AIR 1954 Cal 258.

57. *Harnarayan Shaw v. Gobardhandas Sharoff*, AIR 1953 Cal 140 : 89 CLJ 84.



**15. Local extent**—The Act itself does not lay down any rule as to the local extent of its application. By Section 3 of the Laws Local Extent Act (Act No. XV of 1874), the Act was brought into force throughout India except the Scheduled Districts. By various notifications issued under Section 3(a) of the Scheduled Districts Act, 1874, the Act was brought into force in the Scheduled Districts, as detailed below :

|                                                                                                                     |                                                                   |
|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| Kumaon and Garhwal                                                                                                  | ... See <i>Gazette of India</i> , 1876 Part I, p. 606.            |
| Ajmer and Merwara                                                                                                   | ... „ <i>Gazette of India</i> , 1878, Part I, p. 380.             |
| Scheduled portion of the Mirzapur District                                                                          | ... „ <i>Gazette of India</i> , 1879, Part I, p. 383.             |
| Jaunsar-Bawar                                                                                                       | ... „ <i>Gazette of India</i> , 1879, Part I, p. 302.             |
| West Japarguri                                                                                                      | ... „ <i>Gazette of India</i> , 1881, Part I, p. 74.              |
| Manbhum and Parganas Dhalbhum and Kolhan in the District of Singhbhum, Chhota Nagpur Division and Santhal Parganas. | ... „ <i>Gazette of India</i> , 1881, Part I, p. 504.             |
| Districts of Hazaribagh, Lohardaga (now the Ranchi District).                                                       | ... „ <i>Calcutta Gazette</i> , Part I, p. 44.                    |
| Assam (except the North Lushai Hills).                                                                              | ... „ <i>Gazette of India</i> , 1897, Part I, p. 299.             |
| Scheduled Districts in Ganjam and Vizagapatam.                                                                      | ... „ <i>Gazette of India</i> , 1898, Part I, p. 870.             |
| Chhota Nagpur Division and Santhal Parganas.                                                                        | ... „ <i>Bihar Gazette</i> , 1948, Part II, p. 2080.              |
| Partially excluded areas in the State of Bombay.                                                                    | ... „ <i>Bombay Government Gazette</i> , 1948, Part IV-A, p. 455. |

The Act was extended to all the merged States under the Union of India by the Merged States (Laws) Act, 1949 (Act No. LIX of 1949). It was also extended to the States under the Union of India by their respective Amending Acts given below passed from time to time with certain modifications.

**16. State Amending Acts**—The various State Amending Acts which amended the present Act in its application to certain States are given as follows :

**Andhra Pradesh**

Hyderabad Public Societies Registration Act (Act No. 1 of 1930 F).  
 President's Act X of 1954.  
 A. P. Act VI of 1956.

**Assam**

Societies Registration (First Amendment) Act (Act No. XIV of 1948).  
 Societies Registration (Second Amendment) Act (Act No. XV of 1948).  
 Societies Registration (Third Amendment) Act (Act No. XI of 1952).  
 Societies Registration (Fourth Amendment) Act (Act No. VII of 1957).  
 Societies Registration (Fifth Amendment) Act (Act No. XI of 1958).  
 Assam Act XIII of 1967.

**Bihar**

Societies Registration (First Amendment) Act (Act No. XXX of 1948).  
 Societies Registration (Bihar Amendment) Act, No. 4 of 1951.  
 Societies Registration (Second Amendment) Act (Act No. XIX of 1956).  
 Societies Registration (Bihar Amendment) Act, No. 2 of 1960.  
 Societies Registration (Bihar Amendment) Act, No. 12 of 1963.

**Gujarat**

Societies Registration (Gujarat Amendment) Act, No. 14 of 1965.

**Himachal Pradesh**

Modifications in Punjab Act No. XXXI of 1957.  
 H. P. Act VIII of 1965.

**Maharashtra**

Societies Registration (First Amendment) Act (Act No. II of 1912).  
 Societies Registration (Second Amendment) Act (Act No. LIII of 1948).  
 Societies Registration (Third Amendment) Act (Act No. XI of 1956).  
 Societies Registration (Extension and Amendment) Act (Act No. LXXVI of 1958).  
 Societies Registration (Maharashtra Amendment) Act, No. 11 of 1968.

**Madhya Pradesh**

Central Provinces and Berar Vidya Mandir Act (Act No. III of 1940).  
 Madhya Pradesh Societies Registration Act, 1959 (M. P. Act I of 1960).

**Madras (Tamil Nadu)**

Mad. Act XXIV of 1954.  
 Mad. Act IX of 1960.

**Manipur**

Modifications in Assam Act No. VII of 1957.  
 Modifications in Assam Act No. XI of 1958.

**Mysore**

Societies Registration Act (Act No. III of 1904).

**Orissa**

Societies Registration (Amendment) Act (Act No. XXI of 1958).  
 Societies Registration (Orissa Amendment) Act, No. 8 of 1969.

**Punjab**

- Societies Registration (First Amendment) Act (Act No. XXXII of 1948).
- Societies Registration (Second Amendment) Act (Act No. VI of 1949).
- Societies Registration (Third Amendment) Act (Act No. XXXI of 1957).

**Rajasthan**

- Rajasthan Societies Registration Act (Act No. XXVIII of 1958).
- Rajasthan Societies Registration (Amendment) Act, No. 3 of 1967.

**Tripura**

- Modifications in Assam Act No. VII of 1957.
- Modifications in Assam Act No. XI of 1958.

**Union Territory of Delhi**

- Modifications in Punjab Act No. XXXI of 1957.

**Uttar Pradesh**

- U. P. Registration (Amendment) Act (Act No. XXV of 1958).

**West Bengal**

- Societies Registration (Amendment) Act (Act No. XVI of 1950).

**1. Societies formed by memorandum of association and registration**—Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in Section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint Stock Companies [\*\*\*] form themselves into a society under this Act.

**SYNOPSIS**

- |                         |                                    |
|-------------------------|------------------------------------|
| 1. Legislative changes. | 5. Scientific purpose.             |
| 2. State Amendments.    | 6. Charitable purpose.             |
| 3. English Law.         | 7. Formation of society.           |
| 4. Literary purpose.    | 8. Position of registered society. |

**1. Legislative changes**—The words and figures “under Act XIX of 1857”, occurring in the section within the brackets were omitted by the Repealing Act, 1874 (Act No. XVI of 1874).

**2. State Amendments—Andhra Pradesh**—Under Section 2 of Act No. 1 of 1950 F. ‘any five or more persons’ may form a society as against ‘any seven or more persons’ required under the principal Act for the purpose. Thus, while under the principal Act at least seven members are required to form a society, the number of members required under this State Amending Act is at least five for the purpose.



In its application to the State of Andhra, in Section 1—

(i) for the words “the Registrar of Joint-stock Companies” substitute “the Inspector-General of Registration (hereinafter referred to as the Inspector-General)”.

(ii) add the following Explanation, namely:—

“Explanation.—‘Inspector-General of Registration’ means the Inspector-General of Registration appointed by the State Government under Section 3 of the Indian Registration Act, 1908 (XVI of 1908) and includes any officer subordinate to the Inspector-General, not below the rank of District Registrar, or sub-registrar holding the charge of the office of the District Registrar to whom the State Government may delegate the functions of the Inspector-General under this Act.” President’s Act X of 1954, S. 2 (10. 1954), as re-enacted by A. P., Act VI of 1956, S. 4 and Sch. III, w. e. f. 1-10-1954.

**Assam**—Under Section 2 of the Assam Act No. VII of 1957 for the words ‘Registrar of Joint Stock Companies’ appearing in the present section and also wherever they appear in the principal Act the words ‘Registrar of Societies’ have been substituted.

**Bihar**—In Section 1 of the principal Act for the words ‘Registrar of Joint Stock Companies’ the words ‘Inspector-General of Registration’ have been substituted by Section 2 of Act No. XIX of 1956.

**Delhi and State of Himachal Pradesh**—In the Punjab Act No. XXXI of 1957, as modified in its application to Union territories of Delhi and Himachal Pradesh the registering authorities for the purpose of the Act have been prescribed as the Registrar to be appointed by the Chief Commissioner of Delhi,<sup>1</sup> and the Registrar to be appointed by the Lieutenant Governor of Himachal Pradesh,<sup>2</sup> respectively.—*Gazette of India*, 1960, pt. II, Section 3(i).

**Gujarat**—Same as that of Maharashtra.

**Maharashtra**—*Vide* Section 3 of Bom. Act No XI of 1956 and LXXVI of 1958, Section 2 the words ‘of Joint Stock Companies’ appearing in the present section of the principal Act have been omitted.

**Manipur and Tripura**—In the Assam Act No. VII of 1957, as modified in its application to Union territories of Manipur and Tripura the registering authorities for the purpose of the Act have been prescribed as ‘the Registrar to be appointed by the Chief Commissioner of Manipur,’<sup>3</sup> and the Registrar to be appointed by the Chief Commissioner of Tripura,<sup>4</sup> respectively.

**Orissa**—Under Section 2 of Act No. XXI of 1958 the present section of the principal Act has been re-numbered as Section 1-A substituting the words ‘Registrar of Societies’ in place of ‘Registrar of Joint Companies’ appearing therein and before the said section as so re-numbered and amended, the following new section has been inserted:—

“1. *Appointment of Registrar of Societies*—The State Government may by notification, appoint a person to be called the Registrar of Societies and he shall exercise such powers and perform such duties and functions as are conferred by or under the provisions of this Act, and shall, subject to such general or special orders as the State Government may from time to time make, superintend the administration and carry out the provisions of this Act throughout the State of Orissa.”

1. G. S. R. 83.

2. G. S. R. 84.

3. G. S. R. 85.

4. G. S. R. 86.

**Punjab**—(i) in its application to the State of Punjab as it existed immediately before the 1st November, 1956, in Section 1 for the words “of Joint-Stock Companies” substitute the words “to be appointed by the State Government, by notification in the Official Gazette, for carrying out the purposes of this Act”. Punj. Act XXXI of 1957, Section 2; Act XXXI of 1966, Section 89.

**Rajasthan**—Under Section 1-A of the Rajasthan Act, No. XXVIII of 1958, the registering authority of the societies has been prescribed as ‘the Registrar of Co-operative Societies for the State’ instead of ‘Registrar of Joint Stock Companies’ as prescribed in the principal Act. The State Government has also been empowered to appoint any other person or officer, by name or by virtue of his office to be the Registrar for the purpose of the Act.

**Tamil Naidu**—In its application to the State of Tamil Nadu, in Section 1,—

(a) for the words “the Registrar of Joint Stock Companies” substitute the words and brackets “the Inspector-General of Registration (hereinafter in this Act referred to as the Inspector-General)”.

(b) Add the following Explanation, namely,—

“Explanation.—‘Inspector-General of Registration’ means the Inspector-General of Registration appointed by the State Government under Section 3 of the Indian Registration Act, 1908 (Central Act XVI of 1908), or any of the district authorities subordinate to the Inspector-General of Registration not below the rank of the District Registrar to whom powers may be delegated in respect of this Act.” —T. N. Act XXIV of 1954, S. 2 (1-9-1954).

**Uttar Pradesh**—In the present section and in the principal Act for the words ‘Registrar of Joint Stock Companies’ wherever occurring, the word ‘Registrar’ has been substituted under Section 2 of the U.P. Act No. XXV of 1958.

**3. English law—Number of members**—A society cannot be registered unless it consists of at least seven persons.

**Application for registration**—An application to the Registrar to register a society must be signed by seven members and the Secretary (who need not be a member of the society), and sent to the central office with two printed copies of the Rules and a list of the names of the Secretary and of every Trustee and any officer to be authorised to sue or to be sued on behalf of the society.

In the case of a society assuring a certain annuity, whether to members or others the tables of contributions for the assurance certified by the actuary to the National Debt Commissioners, or by some actuary of ‘at least five years’ standing approved by the Treasury, must also be sent to the Registrar with the application for the registry.<sup>5</sup>

**4. Literary purpose**—A Literary Society is chartiable.<sup>6</sup> In literary purposes the promotion of art, music, drama, archaeology, ecomic and sanitary sciences are also included.<sup>7</sup>

5. Halsbury's Law of England, 3rd Edn. Vol. 18. p. 29.

6. Tudor on Charities, 5th Ed. pp. 30, 31.

7. *Allopp Gill v. Grover*, (1884) 1 TLR 4; *In re Royal Choral Society*, 25 TC 263; *Shakespear's Memorial Trust v. A. G.*, (1923) 2 Ch 398; *Yates v. U. G. London*, (1873) 8 Ch App 454; *Berridge v. Turner*, (1890) 63 LT 470 CA.



**5. Scientific purposes**—In Chambers' Twentieth Century Dictionary the term 'Science' means knowledge ascertained by observation and experiment, critically tested, systematised and brought under general principles. It has been held that the subject of science is not confined to pure or speculative science but includes various branches of science.<sup>8</sup>

**6. Charitable purpose**—The expression 'charitable purpose' must be construed according to its actual language and meaning in the Indian Acts without being bound by the English decisions on the law of charities,<sup>9</sup> nevertheless, the English decisions have always been helpful and guiding factor to the Indian Courts. The preamble of the Statute of Elizabeth,<sup>10</sup> which has been expressly preserved by the Mortmain and Charitable Uses Act of 1888, enumerates the following purposes as being charitable :

"The relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners; the maintenance of schools of learning, and free schools of scholars in Universities; the repair of bridges, ports, havens, causeways, churches, sea-banks and highways; the education and preferment of orphans; the relief stock or maintenance of houses of correction, the marriages of poor maids: the supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captive; the aid or case of any poor inhabitants concerning the payment of fifteens; setting out of soldiers and other taxes."

Sir Samuel Romilly, in a leading case,<sup>11</sup> makes a classification of the charities under these main heads—"firstly relief of the indigent in various ways; money, provisions, education, medical assistance, etc; secondly, the advancement of learning; thirdly, the advancement of religion and fourthly, the advancement of object of general public utility," Lord Macnaghten in his celebrated list of charitable purposes set out in a leading case<sup>12</sup> gives the following classification :

"Charity in its legal sense comprises four principal divisions; trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion and trusts for other purposes beneficial to the community not falling under any of the preceding heads."

8. *I.R.C. v. Forest*, (1890) 15 AC 334; *Weir v. Grum Brown*, (1908) AC 162, 168.

9. *In re Trustees of the Tribune*, (1939) 7 ITR 415 (PC); *All India Spinners' Association v. C. I. T. Bombay*, (1944) 12 ITR 482 PC: AIR 1944 PC 88.

10. 43 Eliz C 4.

11. *Morris v. Bishop of Durham*, 10 ves 522.

12. *S. C. I. T. v. Pemsel*, (1891) 3 TC 53, 96.



It may, however, be noted that Lord Macnaghten does not mean that all trusts for purposes beneficial to the community are charitable,<sup>13</sup> but that there are certain charitable trusts which may fall within that category.<sup>14</sup> On the question as to what is beneficial to the community, the early view was that those purposes were charitable which in the opinion of the donor were beneficial to the public.<sup>15</sup> But this view was later on questioned and it was held that the "opinion of the donor of a gift or the creator of the trust that the gift or trust is for the public benefit does not make it so; the matter is one to be determined by the Court on the evidence before it."<sup>16</sup>

In India the expression 'charitable purposes' was defined for the first time in the Charitable Endowments Act, 1890 (Act No. VI of 1890). Section 2 of that Act defined 'charitable purposes' as including "relief of the poor, education, medical relief and the advancement of any other object of general public utility but not including a purpose which relates exclusively to religious teaching or worship". This definition of 'charitable purposes' expressly excludes a purpose which relates exclusively to religious teaching or worship. It appears to have been based on Sir Samuel Romilly's definition of the term. However, it may be noted that the legal conception of charitable purposes has developed itself according to the popular notions in India.<sup>17</sup> In this connection it is remarkable to note that the legal meaning of "charity" is different from its popular meaning. In popular language, it is used in a wider and also in a limited sense. In its widest sense it denotes all good affections men ought to feel towards each other;<sup>18</sup> and in its limited sense, it is synonymous with relief of poverty.<sup>19</sup> But in its legal sense charity has neither the wider nor the limited meaning. It has a technical meaning which is that a charitable purpose according to the relevant law must come within its ambit. Thus, "if one examines the large mass of judicial decisions on the point, the conclusion would be irresistible that while on the one hand the legal meaning of charity embraces within its scope various cases which could not be deemed charitable in the ordinary sense, yet on the other hand many objects are excluded which are popularly regarded as charitable".<sup>20</sup> For instance, a

13. *In re Mac Duff*, (1196) 2 Ch 451 CA.

14. *Attorney General v. National Provincial and Union Bank of England*, (1924) AC 262, 265.

15. *Baddy & Others v. C. I. R.*, 35 TC 661, 700.

16. *In re Hummeltenberg*, (1923) 1 Ch 237: 92 LJ Ch 326.

17. *Arur v. C. I. T.* (1945) 13 ITR 465, 472: AIR 1946 Bom 144.

18. Wharton's Law Lexicon, 13th Ed.

19. *Baird's Trustees and Lord Advocate*, 15 Ses CA 41 Sen 682.

20. Mukherjee: *Hindu Law of Religious and Charitable Trusts*, p. 53.

benevolent purpose,<sup>21</sup> or a philanthropic purpose,<sup>22</sup> or a pious purpose,<sup>23</sup> or a trust for hospitable purpose,<sup>24</sup> were held as not charitable in the legal sense. As against it, a trust for the promotion of temperance by establishing a public house or home where only non-alcoholic refreshment could be obtained,<sup>25</sup> an association whose main object was to promote musical festivals,<sup>26</sup> a society formed for the improvement of livestock, poultry, implements connected with agriculture, horticulture, etc.,<sup>27</sup> an institution established for advancement of mechanical science,<sup>28</sup> a society formed for the purpose of maintaining a choir to promote the practice and performance of musical work,<sup>29</sup> a trust for the promotion of the music of the particular composer,<sup>30</sup> and encouragement of Boys Scouts Movements,<sup>31</sup> were all held as charitable purposes.

It is no doubt true that a precise and complete definition of 'charity' in the legal sense is difficult to frame. It has, however, been held that the most comprehensive and carefully drawn definition is that "it is a gift to be applied consistently with existing laws for the benefit of an indefinite number of persons by bringing their hearts under the influence of education or religion by relieving their bodies from disease, suffering or constrained, by assisting them to establish themselves for life or by erecting or maintaining public building or works or otherwise lessening the burdens of Government."<sup>32</sup>

Under this Act a society formed for charitable purposes is registrable. The question whether a society formed both for charitable and religious purposes is registrable or not came up for consideration before the Madras High Court in a leading case. Their Lordships held that it is unnecessary to go into the question whether an exclusively religious purpose is a charitable purpose and, whether a society formed for such a purpose would be a charitable society within the meaning of the Act, because where a society is formed for certain purposes whose paramount object is

21. *Morris v. Bishop of Durham*, 10 Ves 522r

22. *In re Macduff*, (1896) 2 Ch 451 CA.

23. *Heath v. Chapman*, (1854) 2 Drew 417.

24. *In re Hewitts's Estate*, 53 LJ Ch 132.

25. *C. I. R. v. Falkirk Temperance Cafe Trust*, 11 TC 353.

26. *C. I. R. v. Glasgow Musical Association*, 11 TC 154.

27. *C. I. R. v. Yorkshire Agrl. Society*, 13 TC 58.

28. *Institution of Civil Engineers v. C. I. R.* 16 TC 158.

29. *Royal Choral Society v. C. I. R.*, 25 TC 26.

30. *Emmanuel v. Rosen*, (1957) 1 All ER 854.

31. *In re Webber*, (1954) 1 WLR 1500.

32. *Rama Swami v. Aiyasami*, AIR 1960 Mad 467.



charitable, the fact that some of the purposes may not be strictly charitable but religious would not render the society less charitable society.<sup>33</sup> The Allahabad High Court also held that a society for religious purposes would ordinarily be a society for charitable purposes.<sup>31</sup> A society whose object is to adopt preventive measures to ward off pecuniary wants would be a charitable society within the meaning of the Act in the same way as one for the relief of wants occasioned by lack of pecuniary means.<sup>35</sup> A society formed for the diffusion of useful knowledge may, as well, be a charitable institution within the legal meaning of the term.<sup>36</sup> If instead of specifying any particular object the word 'charity' is simply used without any qualification, a general charitable intention for objects well recognised as charitable in law should be assumed.<sup>37</sup> The essential factor to determine whether it is a charity or not would be whether there is any private gain by setting up the institution or society.<sup>38</sup>

Among the Hindus, charity and religion overlap each other and in the Hindu system there is no line of demarcation between the two. The Hindu religious and charitable acts have been classified under two heads—*Ishta* and *Purtha*. *Ishta* means Vedic sacrifices, rites and gifts in connection with the same; *Purtha* means pious and charitable acts which are unconnected with the Vedic sacrifices. The expression '*dharama*' includes both *Ishta* and *Purtha* works.<sup>39</sup> No exhaustive list of such works has been drawn up by the Hindu law-givers and they include all acts of piety and benevolence whether sanctioned by Vedas or by the popular religion.<sup>40</sup>

Among the Muslims all works of charity or public utility not condemned by the Mohammedan religion are proper objects of *wakf*.<sup>41</sup> But the tests of general public utility apply to *wakfs* as well, and only those settlements which are for the benefit of the

33. *Khaji Mohammed Husain v. Masjiday Mahmood Jamait Managing Committee*, (1940) 1 MLJ 436: 189 IC 860: AIR 1940 Mad 167.

34. *Anjuman Islamia of Muttra v. Nasiruddin*, 3 ALJ 124: 1906 AWN 59: ILR 28 All 384.

35. *Asalata Roy Smt. v. Society for the Protection of Children of India*, 51 CLJ 272: AIR 1930 Cal 397.

36. *Radhaswami Satsang Sabha v. Tarachand*, AIR 1930 All 557: 1939 ALJ 757: 184 IC 293.

37. *Chatturbhuj Vallabhdas v. C. I. T.*, 1964 ITR 144: AIR 1946 Bom 337.

38. *C. I. T. v. Breach Candy Swimming Bath Trust*, AIR 1955 Bom 250: (1955) 27 ITR 270.

39. *Per Sir Subramania Ayyar, J.*, in *Parthasarathy Pillai v. Tirrvengada*, ILR 30 Mad 340.

40. Mukherjee: Tagore Law Lectures, p. 65.

41. Wilson: Digest of Anglo Mohammedan Law, p. 322.



public would qualify for charitable purposes.<sup>42</sup> As for the members of other communities there are no settled rules defining what are and what are not religious or charitable purposes.

It may be noted that a charitable purpose is not made non-charitable by indicating that one of the places where it may be performed or achieved is within the four walls of a non-charitable institution.<sup>43</sup> Again, a charitable purpose is not vitiated merely because in order to obtain funds to carry out the object, privileges and benefits are offered to certain persons.<sup>44</sup> There is nothing necessarily inconsistent with a purely charitable object in the inclusion in the organisation of the association of some department intended to run at a profit and so to contribute to the accomplishment of the association's charitable purpose.<sup>45</sup> But a society formed for the purpose of merely benefiting its own members, though it may be to the public advantage that its members should be benefited by being educated or having their aesthetic tastes improved, would not be one for charitable purpose.<sup>46</sup> However, if the benefit offered to the members is merely incidental to the promotion of the charitable purpose, the charitable purpose is not vitiated.<sup>47</sup> If one of the ways in which the public object of a society can be served is by giving special advantages to the members of the society, the society does not cease to be for a charitable object because incidentally and in order to carry out the charitable object it is both necessary and desirable to confer special benefit upon the members. In such cases the distinction must be borne in mind between the purpose of the society and the object of the individual members.<sup>48</sup> Where the object of a society is not predominantly charitable one, but merely to promote the interest of the members, then, even if the collateral object is promotion of a charitable purpose, the object of the society will cease to be charitable at all.<sup>49</sup>

**7. Formation of society**—A perusal of the Societies Registration Act makes it clear that when a prescribed number of persons are associated for any literary, scientific or charitable purpose or for any such purpose as is described in Section 20 of the Act by subscribing their names to a Memorandum of Association and filing the same with the prescribed registering authority, a

42. *C. I. T. v. Jamal Mohammed*, (1941) 9 ITR 375.

43. *Diplock Wimble v. Diplock*, (1941) 1 Ch 253 CA.

44. *C. I. R. v. Yorkshire Agricultural Society*, 13 TC 58.

45. *Per Lord Clyde C. I. R. v. Peeblesshire Nursing Association*, 11 TC 335.

46. *C. I. R. v. Yorkshire Agricultural Society*, 13 TC 58.

47. *Institution of Civil Engineers v. C. I. R.*, 16 TC 158.

48. *In re Art Union of London*, (1896) AC 296.

49. *Rex v. S. C. I. Conference*, 10 TC 73.

society comes into existence in the eye of law. When a society is formed accordingly and duly registered, the provisions of the Societies Registration Act will apply to it and such bye-laws of the society as are found inconsistent with them will become inoperative.<sup>50</sup>

8. **Position of registered society**—Kania, J., in a leading case held that “the position of a society registered under the Societies Registration Act XXI of 1860, is more like that of a club or a joint stock company”.<sup>51</sup> Thus a society formed under this Act is a corporation and has separate existence apart from its members and can sue and be sued in its corporate capacity.<sup>52</sup> Like Corporation a registered society can be a trustee of a charity.<sup>53</sup>

Ramkrishna Mission which is a Society registered under the Societies Registration Act has been held to be a company within the definition of “Company” in Section 3(e) of the Land Acquisition Act, 1894. Acquisition of land for companies is dealt with in Part VII, Sections 38 to 44-B of the said Act. Section 39 of that Act provides that the provisions of the Land Acquisition Act shall not be put in force to acquire land for any company unless with the previous consent of the appropriate Government, nor unless the Company have executed an agreement in terms of Section 41 of that Act.<sup>54</sup>

### Section 1-A

#### States Amendments

**Maharashtra**—A new Section 1-A has been added to the principal Act, vide Maharashtra Act XI of 1956 as under :

“1-A. *Interpretation*—In this Act, unless there is any thing repugnant to the subject or context, the expression ‘Registrar’ means “the Registrar of Societies appointed under Section 1-B and includes other officers appointed under the said section to exercise the powers and to perform the duties and functions of the Registrar of Societies.”

**Orissa**—Section 1 of the Principal Act is re-numbered as Section 1-A and new Section as 1 given under Section 1 of the principal Act has been inserted vide Act 21 of 1958.

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50. *Radha Swami Satsang Sabha v. Tarachand and Others*, 1939 ALJ 757: AIR 1939 All 557: 184 IC 293.
51. *Krishnan v. Sundran*, 48 Bom LR 562.
52. *Bappana Rukminamma v. Manganti Venkata Ramdas*, (1940) 2 MLJ 554: (1940) MWN 1015: 191 IC 816.
53. *Advocate General of Bombay v. Abdul Qadir*, ILR 18 Bom 401.
54. *Pramatha Nath v. State of West Bengal*, AIR 1963 Cal 554 at 558. Overruled on another point by Supreme Court in *State of West Bengal v. P. N. Talukdar*, AIR 1965 SC 646.

### Section 1-B

#### States Amendments

**Maharashtra**—A new Section 1-B has been added to the Principal Act, vide Maharashtra Act XI of 1956, as under :

**"1-B. Registrar of Societies and Assistant Registrars**—(1) The State Government may, by notification in the Official Gazette, appoint a person to be called the Registrar of Societies who shall exercise such powers and shall perform such duties and functions as are conferred by or under the provisions of this Act and shall, subject to such general or special orders as the State Government may make, superintend the administration and carry out the provisions of this Act throughout the State.

(2) The State Government may also by like notification appoint persons to be called 'Assistant Registrars of Societies' for such area as may be specified in the notification and empower them to exercise powers and to perform duties and functions under all or such provisions of this Act as may be specified in the notification."

**2. Memorandum of Association**—The memorandum of Association shall contain the following things (that is to say)—

the name of the society ;

the objects of the society ;

the names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the Memorandum of Association.

### SYNOPSIS

- |                                                                                      |                                                                                                                    |
|--------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| 1. English Law—Deposit of documents.                                                 | 6. Governing body.                                                                                                 |
| 2. Memorandum of Association.                                                        | 7. Rules and Regulations.                                                                                          |
| 3. Purpose has to be embodied in the Memorandum of Association and not in the Rules. | 8. Whether statutory rules having the force of Law.                                                                |
| 4. Member.                                                                           | 9. Whether a registered society can be regarded as "State" being an authority under the control of the Government. |
| 5. Director.                                                                         |                                                                                                                    |

**1. English Law—Deposit of documents**—Amendments of Rules, notices of changes of registered office, appointments of new Trustees, annual returns and quinquennial valuations, certain special resolutions, and instruments of dissolution, are deposited with the Rules of the societies to which they relate and are registered or recorded at the central office, with such observations



thereon (if any), as the Chief Registrar may direct. These documents are open to public inspection.<sup>1</sup>

**2. Memorandum of Association**—A Memorandum of Association is the charter of a society and sets out its constitution. It is really the foundation on which the structure of a society is based. It defines its relation with the outside world and the scope of its activities. Its main purpose is to enable the members and others who deal with the society to know what is its permitted range of enterprise. No authority of a society can go beyond the limitations laid down by its Memorandum and if any activity does fall outside the scope of its Memorandum, it becomes *ultra vires* the society.<sup>2</sup>

Any seven or more persons subscribing their names to the Memorandum of Association may form a society and for its incorporation the Memorandum of Association, corrected and certified at least by three members, along with the rules and regulations of the society, must be filed with the prescribed registering authority. However, in the State of Andhra Pradesh the Memorandum of Association must be filed with the Registrar of Joint Stock Companies by at least five members.<sup>3</sup> In Mysore, the Memorandum of Association must also mention the situation of the premises of the society along with other particulars laid down by the above section.<sup>4</sup>

**3. Purpose has to be embodied in the Memorandum of Association and not in the Rules**—The last lines of this section provide that along with the Memorandum of Association a copy of the rules and regulations of the society shall be filed. This indicates that the place for the mention of the purpose of a society is the Memorandum of Association and not the rules. The rules may be a body of provisions framed for the governance of a society but should not be confused with the Memorandum of Association and it should not be forgotten that it is not the rules but the Memorandum of Association in which the purposes of the society are embodied. In other words the purpose or object contemplated by Section 12 of the Act is the purpose mentioned in Section 1 and the object mentioned in Section 2 of the Act.<sup>5</sup>

**4. Member**—A member is a person who has either subscribed to the Memorandum of Association or has agreed in

1. Halsbury's Laws of England, 3rd Ed., Vol. 18, p. 28.

2. *In re Sheffield, etc., Society*, 22 QSD 470.

3. See Section 3 of A. P. Act No. 1 of 1950 F.

4. See Section 3 of Mysore Act No. III of 1904, as amended by Act No. XXXI of 1943.

5. *Ram Charan v. Shridhar*, AIR 1962 All 610, at 615, reversing AIR 1959 All 598.

writing to become a member of a society and whose name is entered in its register of members. He is admitted according to rules and regulations of the society, and also according to them he may resign or retire from membership. The members of a society are fluctuating body. The rule defining a member of a society applicable to the States of Mysore and Rajasthan as laid down by their respective State Acts,<sup>6</sup> reads as follows :

“For the purposes of this Act, a member of a society shall be a person who having been admitted therein according to the rules and regulations thereof, shall have paid a subscription or shall have signed the roll or list of members thereof and shall not have resigned in accordance with such rules and regulations (or a person who shall have been appointed or selected to be a governor, director, trustee or member of the governing body of such society in accordance with such rules and regulations) ; but in all proceedings under this Act no person shall be entitled to vote or to be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.”

No individual member of a society can enter into a contract on behalf of a society without express authority and cannot bind it by his acts. The society incorporated under the Societies Registration Act is only capable of entering into a contract. The registration confers on the society a legal personality and consequently any contract entered into by it would be legally enforceable, unless it was vitiated by a illegality or was shown to be void for any other reason.<sup>7</sup>

**5. Director**—The expression ‘director’ has the same meaning as assigned to it in the Indian Companies Act I of 1956. Section 2(13) of that Act defines this term as follows :

“Director includes any person occupying the position of director by whatever name called.”

**6. Governing body**—The governing body under this Act shall be the governors, council, directors, committee, trustees or other executive body to whom by the rules and regulations of the society the administration and management of its affairs is entrusted. It has a distinct existence from the individual members of the society. It is constituted amongst the general body of the society by election or nomination in accordance with the rules and

6. See Section 16 of Mysore Act No. III of 1904 (omitting the words within brackets) ; Section 15 of Rajasthan Act, No. XXVIII of 1958 (inserting the words within brackets).

7. *Radhaswami Satsang Sabha v. Hanskumar Kishan Chand*, 1959 MPC 102.



regulations of the society. The State Act applicable to the State of Rajasthan defines the expression 'governing body' as follows :

"The governing body of a society shall be the council, committee or other body (consisting of governors, directors, trustees or members) to which by the rules and regulations of the society the management of its affairs is entrusted for the time being."<sup>8</sup>

**7. Rules and Regulations**—For carrying out the objects mentioned in the Memorandum and for internal management of the society, rules may be made by the society and these rules are known as the rules and regulations of the society. The rules and regulations of the society must also be filed along with the Memorandum with the registering authority for the purpose of registration of the society. If the rules and regulations of a society are inconsistent with the provisions of this Act they are invalid, and the fact that they are filed with the registering authority for the purpose of registration of the society cannot make them valid.<sup>9</sup>

**8. Whether statutory rules having the force of law**—Where a school was owned, controlled and managed by the Government of India, prior to the year 1949, it was under the control of the Ministry of Defence. In that year the control was transferred to the Ministry of Education. On June 26, 1952, the Government in the Ministry of Education, passed a resolution for carrying on the administration of the school through a Society to be formed under the Societies Registration Act. The Memorandum of Association and the Rules and Regulations of the Society were to be approved by the Government before being filed with the Registrar of the Joint Stock Companies. On the registration of the Society the administration of the school was to vest in the Society. With the approval of the Government the Memorandum of Association and Regulations of the Society were filed with the Registrar of the Joint Stock Companies.

On December 22, 1952, the Government addressed a communication to the Secretary of the Board on the subject of the conditions of service of the members of the staff of the school consequent to the setting up of the Autonomous Board. It was intimated that the employees of the school shall cease to be government servants with effect from the afternoon of December 31, 1952 and shall become employees of the Board, as from January 1, 1952 provided they agreed to serve the Board and the latter agreed to continue them in service.

8. See Section 16 of Rajasthan Act No. XXVIII of 1958.

9. *Radhaswami Satsang Sabha v. Tara Chand*, 1939 ALJ 757 : AIR 1939 All 557.



The important question which arose was whether the rules relating to the general conditions of service of the staff of the school were statutory in character.

*Held*, that the so-called Regulations were intended to be both the rules and regulations of the Society. Regulation 3 provided: "The Governing Body of the Society, to which by the rules of the Society the management of its affair is entrusted, shall be called the Board of Governors, Lawrence School Sanawar (Simla Hills)". The powers of the Board were given in Regulation 7. There was not the slightest indication that the School Rules were filed with the Memorandum of Association with the Registrar of the Joint Stock Companies, as required under Section 2 of the Act. They did not purport to be certified to be correct by any member of the Board. The School Rules had, therefore, no link with Section 2 of the Act.

The School Rules which contained the conditions of service applicable to the staff employed in the school under the Board, not being statutory in the character, did not fall within the definition of "law" as given in clause (3) of Article 13 of the Constitution. The Rules, therefore, did not impose any statutory obligations on the Society. So even if the petitioner's services were terminated in breach of any of the requirements of the School Rules it could not be said that the breach was of a mandatory obligation imposed by statute or law.

The School Rules not being statutory in character or having the force of law there had been no breach of "mandatory obligation imposed by statute" and as such no writ could be issued. For a breach of the contract of service, if any, the remedy of the petitioner would be to file a suit for damages.<sup>10</sup>

**9. Whether a registered society can be regarded as "State" being an authority under the control of the Government**—In the case of *Gulabchand Gupta v. Hitkarini Sabha*,<sup>11</sup> it was held that unless the body or association of persons against whom a writ of *certiorari* is sought has legal authority to determine questions affecting the rights of subjects and is required to act judicially in that determination, no writ can be issued for quashing its decisions or determination. In this case *Hitkarini Sabha*, which was registered under the Act, was not considered to have legal authority to take decisions affecting rights of subjects.

In the case of *Kartick Chandra Nandi*,<sup>12</sup> Basu, J., took the view that in order to constitute "other authorities" within the meaning

10. *Mohinder Singh v. Union of India*, AIR 1969 Delhi 170 at 172, 173, 180, 181.

11. AIR 1963 MP 270.

12. AIR 1967 Cal 231.

of Article 12 of the Constitution, the body must be a body created by statute having the power to make regulations, which have the force of law, or has power to exercise statutory powers as a public authority and that a non-statutory body, such as a Company and having no statutory powers cannot come within the definition of the "State" in that Article.

In *K. C. Thomas v. R. L. Gadeck*,<sup>13</sup> it has been held that a person serving under the Society or in any of the institutions started by the Society in accordance with its objects is an employee of the Society under the control of the Board of Governors. His service conditions are regulated by the rules and regulations framed by the Society which empowered the Principal of the Sainik School to appoint an employee and in certain circumstances to dismiss him. The Principal was also an employee of the Sainik School established by the Sainik Schools registered under the Act. The remedy of writ petition sought for by the applicant against the dismissal order passed by the Principal was not an appropriate remedy.

But the contrary view in the following case may also be perused which lays down a sounder proposition of law.

Article 12 provides that in Part III of the Constitution, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each State and all local or other authorities within the territory of India or under the control of the Government of India. The expression "other authorities", as used in this Article, came up for consideration before the Supreme Court in *Rajasthan State Electricity Board, Jaipur v. Mohan Lal*,<sup>14</sup> Bhargava, J., while delivering the majority judgment of the Court, observed that the doctrine of *ejusdem generis* could not be applied to the interpretation of the expression "other authorities" as used in Article 12 of the Constitution. The words were considered to be of wide amplitude and capable of comprehending every authority created under a statute and functioning within the territory of India or under the control of the Government.

After referring to certain decisions it was observed :

"These decisions of the Court support our view that the expression 'other authorities' in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities. Under the Constitution, the State is itself

13. AIR 1970 Pat 163.

14. AIR 1967 SC 1857.



envisaged as having the right to carry on trade or business as mentioned in Article 19(1)(g). In Part IV, the State has been given the same meaning as in Article 12 and one of Directive Principles laid down in Article 46 is that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people."

The Society controlling and administering a school can be regarded an authority created under a statute, on whom some powers are conferred by law and which functions within the territory of India. It is a body created for the purpose of promoting educational interests of the people.

The reasoning adopted in some cases invoking the application of the rule of *ejusdem generis* in determining whether a body or association of persons is covered by the expression "other authorities", for purposes of Article 12 of the Constitution, can no longer be regarded to be correct. The majority view in the case of *Rajasthan Electricity Board*,<sup>15</sup> did not put a narrow interpretation on the expression "other authorities". That expression was not interpreted to mean only those constitutional or statutory authorities which were invested with sovereign powers, i.e., powers to make rules or regulations and to administer or enforce them to the detriment of citizens and others.

A Full Bench of the Patna High Court in *Umesh Chandra Sinha v. V.N. Singh*,<sup>16</sup> the following case of *Rajasthan State Electricity Board*,<sup>17</sup> held, that any public authority created by statute on whom powers are conferred by law must be held to be a "State" irrespective of whether the functions of that authority are sovereign functions or non-sovereign functions such as spreading of education. The Society is comprehended by the expression "other authorities" in Article 12, being a statutory authority on whom certain powers are conferred by the law under which it was registered. The Society can also be considered to be an authority for purposes of Article 226 of the Constitution.<sup>18</sup>

**3. Registration and fees**—Upon such Memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar

15. AIR 1967 SC 1857.

16. AIR 1968 Pat 3 (FB).

17. AIR 1967 SC 1857.

18. *Mohinder Singh v. Union of India*, AIR 1969 Delhi 170 at 180.



for every such registration a fee of fifty rupees, or such smaller fee as the State Government may, from time to time, direct; and all fees so paid shall be accounted for to the State Government.

## SYNOPSIS

- |                                           |                                                    |
|-------------------------------------------|----------------------------------------------------|
| 1. Legislative changes.                   | Act do not become corporations aggregate.          |
| 2. State amendments.                      | 8. Effect of non-registration.                     |
| 3. English Law.                           | 9. Registration of societies having similar names. |
| 4. Requisite conditions for registration. | 10. Mutual benefit societies.                      |
| 5. Proof of registration.                 | 11. Societies incorporated by special Acts.        |
| 6. Effect of registration.                |                                                    |
| 7. Societies registered under the         |                                                    |

**1. Legislative changes**—The words ‘State Government’ occurring in the section were *substituted* for the word ‘Government’ by the Government of India (Adaptation of Indian Laws) Order, 1950.

**2. State amendments**—The amendments made by amending Acts in certain States are given below:

### Andhra Pradesh

“After such memorandum and certified copy have been filed, the Registrar of Joint Stock Companies shall certify under his hand that the Society is registered under this Act. There shall be paid for every such registration such fee as the Government may prescribe and which in no case shall exceed fifty rupees.”<sup>1</sup>

In its application to the State of Andhra, in Section 3 for the words “the Registrar” wherever they occur *substitute* the words “the Inspector-General.” —President’s Act X of 1954, S. 3 (1-10-1954).

**Bihar**—“In Section 3 of the Principal Act for the word ‘Registrar’ wherever it occurs, the words ‘Inspector General of Registration’ shall be *substituted*”.<sup>2</sup>

**Gujarat**—Same as that of Maharashtra.

**Himachal Pradesh**—In its application to Himachal Pradesh, in Section 3, for the full stop at the end of section, *substitute* a colon and *add* thereafter the following proviso:

“Provided that the State Government may by notification in Official Gazette exempt any particular society or class of societies from the payment of registration fee”. —H. P. Act VIII of 1965, S. 2 (26-11-1965).

**Maharashtra**—(i) To the present section of the principal Act, the following proviso shall be *added*, namely:

“Provided that no such fee shall be payable for the registration of a society formed with the object of running an educational institution in any area in which the Central Provinces and Berar Vidya Mandir Act,

1. Section 4 of A. P. Act No. 1 of 1950 F.
2. Section 3 of Bihar Act No. XIX of 1956.

1939 (C. P. and Berar Act III of 1940), is in force, if the objects are similar to the objects of a Vidya Mandir established under Part I of that Act.”<sup>3</sup>

(ii) *Vidarbha Region*.—In its application to the Vidarbha region of the State of Maharashtra the amendment made in Section 3 by C. P. and Berar Act III of 1940 shall cease to have effect and is repealed. —Bom. Act LXXVI of 1958, S. 2(b) (7-10-1958).

(iii) In Section 3 after the words “the Registrar shall”, insert the words, “subject to the provisions of Section 3-A.” —Maha. Act XI of 1968, S. 2 (1-10-1968).

#### Mysore

“Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of twenty rupees, or such smaller fee as the Government may, from time to time, direct, and all fees so paid shall be accounted for to the Government.”<sup>4</sup>

**Punjab**—To the present section of the principal Act the following proviso shall be added, namely—

“Provided that in the case of a society which had prior to the 15th August, 1947, been registered by the Registrar of Joint Stock Companies at Lahore, the State Government may grant exemption from payment of the whole or any part of the Registration fee.”<sup>5</sup>

**3. English Law.—Functions of Registrar**—The expression “the Registrar” in the Friendly Societies Acts means for England the contral office, and for Scotland the Assistant Registrar for Scotland; Certain functions under the Acts are exercisable by the Registrar while others may be exercised only by the Chief Registrar or by some person appointed by him. Thus in the case of friendly societies or branches, registered or about to be registered, the functions of the Registrar include aknowledgments of registry, the registry of Rules and of amendments of Rules. The Registrar also prescribes the form of, and receives, the annual returns and valuations. The function of the Chief Registrar include the appointment of Inspectors to investigate the affairs of societies, the calling of special meetings of socities, the suspension and cancelling of the registry of societies and the making of awards dissolving them, also arbitration on disputes. The Chief Registrar every year makes a report of his proceedings and those of the Assistant Registrars, and of the principal matters transacted by him and them, and of the valuations and annual returns sent to the Registrar during the preceding year, and the report is laid before Parliament.

3. Section 3 of Bombay Act No. LXXVI of 1958.

4. Section 4 of Mysore Act No. III of 1904.

5. Section 2 of Punjab Act No. XXXII of 1948.

**Authentication of documents**—Documents requiring authentication by the central office are authenticated by its seal. Documents bearing the seal or stamp of the central office are to be received in evidence without further proof, and documents purporting to be signed by the Chief Registrar or any Assistant Registrar or any Inspector or approved Auditor or Valuer under the Friendly Societies Act, 1896, are, in the absence of evidence to the contrary, to be received in evidence without proof of the signature.

**Fees.**—Fees prescribed by the Treasury are payable to the Exchequer through the Registrar in respect of certain matters transacted under the Friendly Societies Acts and for the inspection of documents held by the Registrar. No fee is payable on the registry or amendment of the Rules of a friendly, benevolent, or cattle insurance society, working men's club, or old people's home society, or on the registry of certain specially authorised societies or the amendment of their Rules or for certain other specified matters.

**Acknowledgment of registry**—The Registrar, if satisfied that a society has complied with the statutory provisions as to registry, issues an acknowledgment specifying the designation and classification of the society. The acknowledgment is conclusive evidence of due registration, unless it is proved that the registry of the society has been suspended or cancelled, but is not conclusive evidence of the legality of the Rules of a society, or whether the society is a society within the provisions of the Act. Proof of registry of a branch does not prevent evidence being adduced of its succession from the society.

Where the society is a specially authorised society, to which only certain specified provisions of the Act are to be extended, the provisions specified, must be inserted in the acknowledgment of registry.<sup>6</sup>

**4. Requisite conditions for registration**—Section 1 of the Act requires that the Memorandum of Association shall be signed by seven or more persons. Section 2 provides that the rules and regulations of the society shall be certified to be corrected copy by not less than three of the members of the governing body, while Section 3 lays down that "upon such Memorandum and certified copy" being filed, the Registrar shall certify under his hand that the society is registered. It is, therefore, abundantly clear that the Registrar is not expected to register a society unless the provisions of Sections 1 and 2 of the Act have *prima facie* been complied with.

6. Halsbury's Laws of England, 3rd Edn., Vol. 18, pp. 28, 29, 30.



It is true that the Registrar is not in a position to know whether the persons whose signatures appear on any Memorandum of Association have actually signed that Memorandum of Association, but before registering a society he has to satisfy himself that the Memorandum, as required by law, has been filed. In other words, the Memorandum must purport to have been signed by at least seven persons and the copy of the rules and regulations of the Society must, on the face of it, bear the signatures of not less than three of the members of the governing body.<sup>7</sup>

**5. Proof of registration**—It is incumbent upon the Registrar to issue a certificate under his hand to the effect that the Society is registered under the Act after being filed with him the Memorandum of Association and certified copy of rules and regulations and depositing the prescribed fee. This certificate of registration, however, does not raise a presumption that the Society is duly registered. Only the rules and regulations and the Memorandum certified under Section 19 of the Act constitute a *prima facie* proof of registration and of the matter contained therein.<sup>8</sup>

**6. Effect of registration**—A Society when registered under the Societies Registration Act according to its provisions becomes a body corporate with perpetual succession and a common seal. After such an incorporation it becomes a legal person with separate existence distinct from its members.<sup>9</sup> A society, so registered, is a legal person just as an individual but with no physical existence.<sup>10</sup> As such it can acquire and hold property and can sue and be sued.<sup>11</sup>

It should, however, be noted that a society registered under the Societies Registration Act differs from a company incorporated under the Companies Act in certain respects. The shareholders of a company hold the properties of the company as their own and on its dissolution they can claim their beneficial interest therein; but in the case of a Society the members of the Society do not have any proprietary or beneficial interest in the properties of the Society and so upon its dissolution they cannot claim any interest in the properties of the dissolved Society. What they

7. *Shanti Sarup v. R. S. Sabha*, AIR 1969 All 248, pp. 254, 255.

8. *In re Sunder Singh*, AIR 1938 PC 73: 1938 ALJ 194: 172 IC 993: 1938 PWN 518.

9. *Mrs. Bacha F. Guzdar v. CIT*, AIR 1955 SC 74, followed in AIR 1970 Pat 163.

10. *Ranger v. Great Western Rly.*, (1854) 5 HLC 86.

11. *Bappana Rukminamma v. Maganti Venkata Ramdas*, (1940) 2 MLJ 554: 191 IC 816.

are entitled to, is the right of management of the properties of the Society for achieving its aims and objects.<sup>12</sup>

There has been a controversy whether a Society registered under the Societies Registration Act is a person within the meaning of Section 236 of the Indian Succession Act. The Allahabad High Court has held that a grant of letters of administration can be made to a society registered under the Societies Registration Act as it is a person within the meaning of Section 236 of the Indian Succession Act.<sup>13</sup> But the Lahore High Court has held a contrary view. According to it neither a probate nor a letter of administration can be granted to an association of individuals unless it is a company satisfying the conditions laid down by the rules of respective Governments and a society, by reason of its registration, does not cease to be an association of individuals.<sup>14</sup> However, the trend of decision of courts in India is in favour of the view that a probate or a letter of administration under Sections 223 and 236 of the Indian Succession Act can be granted to a society registered under the Societies Registration Act,<sup>15</sup> since a society registered under this Act is more like that of a club or a joint stock company.<sup>16</sup>

It may be noted that registration of the society confers on it certain privileges. The identity of the society remains continuous by reason of the registration under the Act, notwithstanding its members and the governing body which are not always the same.

**7. Societies registered under the Act do not become corporations aggregate.**—Societies registered under Societies Registration Act do not become corporations aggregate. They cannot be said to be incorporated bodies though they have been conferred with powers to sue and be sued. In *Board of Trustees Ayurvedic and Unani Tibia College, Delhi v. State of Delhi*,<sup>17</sup> the following passage from "Law relating to Unincorporated Associations" (1938 Edn.), by Dennis Llyod, was quoted with approval:

"Registration of society does not result in incorporation, but merely entitles the society so registered to enjoy the privileges conferred by the Act. These privileges are of considerable importance and certain of them go a long way towards

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12. *Pamulapati Buchi Naidu College Committee v. Government of Andhra Pradesh*, AIR 1958 AP 773 : 1958 Andh WR 580.
  13. *Ganga Sahai v. Bharat Bhan*, AIR 1950 All 480 : 1950 ALJ 353.
  14. *Mahashaya Krishan v. Mst. Maya Devi*, 49 PLR 228 : AIR 1948 Lah 54.
  15. *Satyavarat Sidhantalankar v. Arya Samaj Bombay*, AIR 1946 Bom 516; *Gang Sahai v. Bharat Bhan*, AIR 1950 All 480; *Bopanna Rukminamma v. Maganti Venkata Ramdas*, AIR 1940 Mad 949.
  16. *A. S. Krishnan v. M. Sundaram*, AIR 1941 Bom 312.
  17. AIR 1962 SC 458.

giving registered societies.....a status in many respects analogous to a corporation strictly so called, but without being technically incorporated. Thus something in the nature of perpetual succession is conceded by the provision that the society's property is to vest in the trustees for the time being of the society for the use and benefit of society and its members and of all persons claiming through the members according to the society's rules, and further that the property shall pass to succeeding trustees without assignment or transfer. In the same way, though the society, being unincorporated, is unable to sue and to be sued in its own name, it is given the statutory privilege of suing and being sued in the name of its trustees."

The decision in *Rukminamma v. Vankata Ramadas*,<sup>18</sup> and *Satyavart Sidhantalankar v. Arya Samaj, Bombay*,<sup>19</sup> cannot be considered as having laid down the law correctly. The correctness of these decisions was doubted by the Supreme Court in *Board of Trustees' case*.<sup>20</sup> Dealing with these decisions, this is what S. K. Das, J., who spoke for the majority stated in Paragraph 15 of the judgment (at p. 467) :

"On behalf of the petitioner reliance has been placed on the decision in *Krishnan v. Sundaram*,<sup>21</sup> where Kania, J. (as he then was), said :

"The position of the society registered under the Societies Registration Act, 1860, is like that of a club or a joint stock company."

There was no discussion of the question of incorporation and the decision cannot be accepted as authoritatively laying down that a society registered under the Societies Registration Act is a corporation. There was a similar observation in *Rukminamma v. Venkata Ramdas*,<sup>22</sup> and *N. A. Nannier v. Official Assignee, Madras*.<sup>23</sup> There is, however, a fairly full discussion of the question in *Satyavart Sidhantalankar's case* where Bhagwati, J., held that a society registered under the Societies Registration Act, 1860, was a legal entity apart from the members constituting it and it can sue and be sued in its own name. The question which fell for decision in that case was not whether a society registered under the Societies Registration Act was "incorporated" as that term is

18. AIR 1940 Mad 949.

19. AIR 1946 Bom 516.

20. AIR 1962 SC 458.

21. 43 Bom LR 562 : AIR 1941 Bom 312.

22. AIR 1940 Mad 949.

23. AIR 1951 Mad 875.



legally understood. The question there was whether such a society could sue or be sued except in the manner provided by Sections 6 and 7. It was held that it could and the reason given was thus expressed by the learned Judge :

"I am of opinion that the provisions contained in Sections 6, 7 and 8 of the Societies Registration Act are not inconsistent with the user of the registered name of the society in connection with legal proceedings. As Lord Lindley observed in *Taff Vale Railway Company's* case.<sup>24</sup> 'I do not say that the use of the name is compulsory but it is at least permissive'.

"If this is the true legal position of the society registered under the Societies Registration Act, the objection..... that the plaintiffs and the defendants are one and the same and that the suit as framed is not maintainable by reason of the society being the plaintiffs as well as defendants disappears. The plaintiffs are suing on behalf of themselves and all the members of the society. The first defendant is the President of the society and represents the society. As I have already observed the society on its registration with the Registrar of Joint Stock Companies becomes a legal entity apart from its members ; it would be, therefore, idle to contend that the society are the plaintiffs as well as the first defendant in this action."

"It is unnecessary for us to consider the correctness or otherwise of the reason given, it is sufficient for us to state that we do not think that the decision proceeds on the footing that a society registered under the Societies Registration Act is a corporation in the sense of being incorporated as that term is legally understood, but if it does, we are unable to accept it as correct."<sup>25</sup>

**8. Effect of non-registration**—In the absence of registration the society has no legal status, and, therefore, it cannot sue and be sued.<sup>26</sup> A non-registered society may exist in fact but does not exist in law. It is immaterial under the Act whether the society is registered, but where the benefit is claimed, the registration of the society under the Act is required.<sup>27</sup>

If promoters of any company entered into any contract on behalf of such company not yet incorporated, such promoters

24. 1901 AC 426.

25. *Century Club v. State of Mysore*, AIR 1967 Mys 25 at p. 32.

26. *Samboodas Devidas Chawre v. Chawre Digamber Jain Boarding*, 31 NLR 15: AIR 1934 Nag 207.

27. *Radha Swami Satsang Sabha v. Hanskumar Kishan Chand*, AIR 1959 MP 172.

would be personally liable for the obligation they create under any contract with any one, for the simple reason that the principal has no legal existence. Not even any subsequent ratification by the company, when it comes into existence, can relieve the personal liability of the agent who made the contract on behalf of the company before its coming into existence.

Thus where the appellant's plea was that he had entered into the contract on behalf of the Matri Seva Sadan, which factually was not true, except that at the time of the contract, he had indicated that he was taking the house on rent for the purpose of starting a hospital for women. The principal was unknown at the time, not having come into existence. He had, thus, entered into the contract on behalf of an undisclosed principal. He would, therefore, be personally liable under the contract. But even if the principal was disclosed, not being registered under the Societies Registration Act, it was not a legal body, and, therefore, it could not be sued. Thus, even if the principal was disclosed at the time the appellant took the house on rent, he was still personally liable, being covered under Exceptions (2) and (3) to Section 230 of the Contract Act.<sup>28</sup>

**9. Registration of societies having similar names**—It is no doubt true that the law does not in general recognise any exclusive right to the use of a name personal or local. However, as a rule of convenience, if a society proposed for registration has a name similar to the name of an existing one and the proposed society is registered, the existing society can restrain the so proposed society by means of an injunction on the ground that the business of the existing society would be seriously interfered with and damaged by reason of confusion in the minds of the public resulting from similarity of names.<sup>29</sup>

There are certain special statutes which entitle companies and business concerns to the exclusive use of a name or a mark. *e. g.*, the Companies Act or the Indian Trade Marks Act. The Court affords protection to trading or professional concerns by granting an injunction restraining the adoption and use of such a name by another, if it is satisfied that damage would be caused by reason of confusion in the mind of the public or by reason of the public being deceived by the use of such name. This protection is also extended to charitable and other societies as well. In a leading English case this protection was extended to a charitable institution incorporated by the Royal Charter for the purpose of taking over and carrying on the management of a voluntary association known

28. *Mahabir Prasad v. Satyanarain*, AIR 1963 Pat 131 at p. 135.

29. *M. Srinivas Malliah v. Krishna Kumar Chatterjee*, AIR 1952 Cal 804.



as British Legion.<sup>30</sup> The principles of this English case were also applied in a Bombay case where an idol in a particular temple had acquired prominent fame and another temple of the same name was made with the installation of an identical idol and the latter was restrained by an injunction.<sup>31</sup>

**10. Mutual benefit societies**—Mutual benefit societies do not come within the purview of the Societies Registration Act but the provisions of the Companies Act shall be applied to them as laid down by Section 620-A of the Companies Act. Under the said section the Central Government is authorised to declare by notification in the Official Gazette subject to such exceptions and modifications as may be specified in the notification, such mutual benefit societies or *nidhis*.

**11. Societies incorporated by special Acts**—There are a number of societies or associations which are incorporated by special Acts of Parliament, e. g., the Oil Seeds Committee, the Lac Cess Committee, the Dental Council, the Pharmacy Council, etc. These bodies are constituted under their respective statutes and the Societies Registration Act is not applicable to them for their incorporation.

## Section 3-A

### States Amendments

#### Assam

After Section 3 insert the following :

“3-A. *Name of Society*.—(1) No society shall be registered under a name which is identical with, or too nearly resembles the name of, any other society or any body corporate which has been previously registered or incorporated under this Act or any other law for the time being in force, as the case may be.

No society shall use in its nomenclature any of the words, namely :

‘Union’, ‘State’, ‘Land Mortgage’, ‘Gandhi’, ‘Reserve Bank’ or any word expressing or implying the sanction, approval or patronage of Central or any State Government or any word which suggests or is calculated to suggest connection with any local authority or any corporation or body constituted by the Government under any law for the time being in force except when the State Government signifies its consent to the use of such words as part of the name of a society by order in writing”. —Assam Act XIII of 1967, S. 2 (18-8-1967).

**Maharashtra**.—A new Section 3-A has been added to the Principal Act, vide Maharashtra Act XI of 1968, as under :

“3-A. *Prohibition against registration of societies with undesirable names*.—No society shall be registered by a name which, in the opinion

30. *British Legion v. British Legion Club (Street) Ltd.*, 48 RPC 555.

31. *Purshottam Das v. Bai Dahi*, AIR 1940 Bom 205.



of the Registrar, is undesirable, being a name which is identical with or which in the opinion of the Registrar so nearly resembles the name by which any other existing society has been previously registered, as to be likely to deceive the public or members of either society, or which without the previous permission of the Government concerned, suggests or is calculated to suggest the patronage of that Government or connection with any body constituted by that Government or any local authority, or which may subject to any rules made in this behalf, be deemed to be undesirable by the Registrar."

#### 4. Annual list of managing body to be filed.—

Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint Stock Companies, of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

### SYNOPSIS

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|----------------------|----------------------------|
| 1. State amendments. | 3. Annual changes.         |
| 2. English law.      | 4. Annual General Meeting. |

1. **State amendments.**—The section has been amended by certain States' Acts as follows:

#### Andhra Pradesh

In its application to the State of Andhra, in Section 4 for the words "the Registrar of Joint-Stock Companies", *substitute* the words "the Inspector-General of Registration." —President's Act X of 1954, S. 3 (1-10-1954).

#### Assam : Manipur : Tripura

In its application to the State of Assam in Section 4 for the words "Registrar of Joint-Stock Companies", *substitute* "Registrar of Joint-Stock Companies", *substitute* "Registrar of Societies". —Assam Act VII of 1957, S. 2(ii), (17-7-1957) and G.S.Rr. 85 and 86 of 1960, Gaz. of India, 1960, Pt. II, S. 3(i), pp. 145, 146.

**Bihar.**—"In this section for the words 'Registrar of Joint-Stock Companies', the words 'Inspector-General of Registration' shall be *substituted*."<sup>1</sup>

#### Gujarat

Same as that of Maharashtra.

**Maharashtra.**—"In this section the words 'of Joint-Stock Companies', shall be *deleted*."<sup>2</sup>

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1. See Section 4 of Bihar Act No. XIX of 1956.
  2. See Section 3 of Bombay Act No. XI of 1956.

**Mysore.**—The Mysore Act No. III of 1904, *vide* its Section 5 provides as follows:

“4. *Annual list of managing body to be filed.*—(a) Once in every year, on or before the fourteenth day succeeding the day on which (\*\*\*)<sup>3</sup> the annual general meeting of the society is held, (\*\*\*)<sup>4</sup> a list shall be filed with the Registrar of Joint-Stock Companies of the names, addresses and occupations of the governors, council, directors, committee or other governing body then entrusted with the management of the affairs of the society.

(b) A copy of the balance-sheet together with a statement of receipts and expenditure audited by a person who has been granted a certificate by the Government under Section 144 of the Mysore Companies Act, 1938,<sup>5</sup> or by a special Auditor approved by the Government shall also be filed with the Registrar of Joint-Stock Companies at the same time.

(c) A filing fee of eight annas each shall be paid along with the list and the balance-sheet referred to in sub-sections (a) and (b). The said fee may be paid either by affixing Mysore Court-fee Stamps or by crediting the amount to any Government Treasury and by attaching the duplicate Challan to the documents.”

#### Orissa

In its application to the State of Orissa, in Section 4 for the words “Registrar of Joint-Stock Companies” *substitute* the words “Registrar of Societies”. —Orissa Act XXI of 1958, S. 3 (w.e.f. 1-1-1961).

**Punjab.**—(i) In this section the following words shall be *added*, namely,—

“If a society makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees.”<sup>6</sup>

(ii) *Omit* the words “of Joint-Stock Companies”. —Punjab Act XXXI of 1957, S. 3:

C. Act XXXI of 1966 and G. S. Rr. 83 and 84 of 1960, G. I. 1960, Pt. II, S. 3(i), pp. 144, 145.

**Rajasthan.**—Section 4 of the Rajasthan Act No. XXVIII of 1958, lays down that once in every year, on or before the fourteenth day succeeding the day on which, according to the rules and regulations of the society, the annual general meeting of the society is held, or, if the rules and regulations do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar, of the names, addresses and occupations of the governors, directors, trustees or members of the council, committee or other governing body then entrusted with the management of the affairs of the society. Again, Section, 4-A of this Act relates to the changes in governing body and rules to be filed with the Registrar.

#### Tamil Nadu

In its application to the State of Tamil Nadu, the amendment made in Section 4 is the same as that of Andhra Pradesh. —T. N. Act XXIV of 1954, S. 2(iv) (1-9-1954).

**Uttar Pradesh.**—“In this section for the words ‘Registrar of Joint-Stock Companies’ the word ‘Registrar’ shall be *substituted*.”<sup>7</sup>

3. *Omitted* by Act No. XXXI of 1943.

4. *Ibid.*

5. *See* Part B States (Laws) Act No. III of 1951.

6. *See* Section 2 of Punjab Act No. VI of 1949.

7. *See* Section 2 of U. P. Act No. XXV of 1958.

**2. English law—General meetings.**—The Rules of registered societies and branches must provide for the mode of holding general meetings. Collecting societies are subject to certain statutory regulations as to the holding of such meetings and notices thereof. Rules may provide for general meetings being constituted by delegates appointed by members.

Where the place of meeting is fixed by the Rules, which provide for their alteration only at a meeting of the society legally convened, new Rules made at a meeting held elsewhere and purporting to replace former Rules are void.

The Secretary or other officer of a friendly society served with a requisition, duly signed in accordance with the Rules, to call a meeting for the purpose of altering or rescinding the Rules must convene the meeting.<sup>8</sup>

**3. Annual changes**—It is obligatory upon a society registered under this Act to file with the registering authority all changes made annually by it in its general meeting or otherwise. In certain States special provisions have been made by their respective amending Acts. Section 5 of the Andhra Pradesh Act No. I of 1350 F. lays down that every year, within two weeks from the date on which, according to the rules of the society, the annual general meeting of the society is held, and if the rules do not provide for an annual general meeting, every year in the month of *Azur*, a list shall be filed with the Registrar of Joint-Stock Companies which shall contain the names, addresses and occupations of the members of the managing committee and officers entrusted with the management of the affairs of the society.

**4. Annual General Meeting**—The holding of an annual general meeting is subject to the rules and regulations of the society and all members entered on the roll are entitled to participate and vote in such meeting according to the bye-laws made by the society in this respect.

## Section 4-A

### States Amendments

**Assam.**—A new Section 4-A inserted in the Societies Registration Act, 1860, by the Societies Registration (Assam Third Amendment) Act XI of 1952, reads as follows:

*“4-A. Changes in managing body and rules to be filed.*—(1) Together with the list mentioned in Section 4, there shall be sent to the Registrar of Joint-Stock Companies a statement showing changes during the year to which the list relates in the personnel of the governors, council, directors, committee or other governing body to whom the management of

8. Halsbury's Laws of England, 3rd Edn., Vol. 18, p. 62.



the affairs of the society is entrusted and also a copy of the rules of the society corrected upto date and certified to be a correct copy by not less than three members of the governing body.

(2) A copy of every alteration made in the rules of the society, certified to be a correct copy by not less than three members of the governing body, shall be sent to the Registrar of Joint-Stock Companies within fifteen days of the making of such alterations."

**Bihar.**—A Section 4-A has been added to the principal Act, *vide* Bihar Act No. 4 of 1951, as under :

"4-A. *Changes in managing body and rules to be filed.*—(1) Together with the list mentioned in Section 4, there shall be sent to the Inspector-General of Registration a statement showing all changes during the year to which the list relates in the personnel of the governors, council, directors, committee or other governing body to whom the management of the affairs of the society is entrusted and also a copy of the rules of the society corrected upto date and certified to be a correct copy by not less than three of the members of the governing body.

(2) A copy of every alteration made in the rules of the society, certified to be correct copy by not less than three of the members of the governing body, shall be sent to the Inspector-General of Registration within fifteen days of the making of such alteration."

**Gujarat.**—A new Section 4-A has been added to the principal Act *vide* Gujarat Act XIV of 1965, as under :

"4-A. *Changes in managing body and rules to be filed.*—(1) Together with the list mentioned in Section 4, there shall be sent to the Registrar a statement showing changes during the year to which the list relates in the personnel of Governors, council, directors, committee or other governing body to whom the management of the affairs of the society is entrusted and also a copy of the rules of the society corrected upto date and certified to be a correct copy by not less than three of the members of the governing body.

(2) A copy of every alteration made in the rules of the society, certified to be a correct copy by not less than three members of the governing body, shall be sent to the Registrar within thirty days of the making of such alteration."

**Maharashtra.**—A new Section 4-A has been added to the principal Act by Maharashtra Act XI of 1968 as under :

"4-A. *Power of Registrar to call for information or return from governing body of society and provisions relating thereto.*—(1) The Registrar may serve or cause to be served, on the governing body entrusted with the management of the affairs of any society registered under this Act, a notice requiring it to furnish in such manner as may be prescribed by rules, information or returns relating to persons employed by the society, their condition of employment (including their employments, any contributions, concessions or other benefits and amenities provided for employees) and matters relating thereto, as may be prescribed by such rules.

(2) The form in which such information or returns should be furnished, the particulars which they should contain and the intervals (if any) in which such information or returns should be furnished, shall be such as may be prescribed by rules.

(3) The notice referred to in sub-section (1) may be served by post.

(4) No information or return collected for the purposes of the section shall, without the previous consent in writing of the society in relation to which the information or return was given or made, be published in such manner as would enable any particulars to be identified as referring to a particular society.

(5) Except for the purposes of a prosecution under Section 11-A or under the Indian Penal Code (XLV of 1860), no person other than the Registrar or any person duly specified by him in this behalf, shall be permitted to see any information or return furnished as aforesaid.

(6) No suit or other legal proceeding shall lie against the Registrar or any person acting under the authority of the Registrar in respect of anything in good faith done or intended to be done in pursuance of this section."

**Mysore.**—A new Section 4-A has been added to the principal Act by Mysore Act III of 1904, as under :

"4-A." (1) All societies registered under this Act shall hold every year a general meeting at which the report of the management of the institution for the previous year, together with an audited copy of the balance-sheet, receipts and expenditure statement and the auditor's report shall be submitted for approval.

(2) A special meeting may be convened at any time on the requisition of the President or Chairman of the Executive Committee, if any, or on the requisition of not less than three members of the Executive Committee or seven members of the general body of the society, who shall state in writing the business for which they wish the meeting to be convened. The Secretary shall convene a meeting of the society before the lapse of ten days from the date of the receipt of the requisition.

(3) If a member has no registered address in the State of Mysore except Bellary District and has not supplied to the society an address within the State of Mysore except Bellary District for the giving of notice to him, a notice advertised in two newspapers (one in English and the other in any of the vernacular languages), circulating in the neighbourhood of the registered office of the society, shall be deemed to be duly given to him on the day on which the advertisement appears."

**Orissa.**—A new Section 4-A has been added to the principal Act by Orissa Act 8 of 1969 as under :

"4-A. *Changes in the list mentioned in Section 4 and rules to be filed.*—(1) Without prejudice to the provisions of Section 4 any change in personnel on the list filed under the said section occurring during the year to which such list relates shall be intimated to the Registrar of Societies within two months of such change.

(2) A copy of every alteration made in the rules and regulations of the Society, certified to be a correct copy by not less than three of the Governors, Directors or Members of governing body, as the case may be, shall be sent to the Registrar of Societies within two months of the making of such alteration."

9. Section 5-A inserted by Act No. XXXI of 1943.

**Pondicherry**

(i) In its application to the Union territory of Pondicherry, in Section 4, for the words 'Registrar of Joint-Stock Companies', words "Registrar of Companies" be substituted.

(ii) After Section 4 the following section shall be substituted :

**"4-A. Filing of Annual Accounts.**—(1) A copy of the balance-sheet together with a statement of receipts and expenditure duly certified by at least two members of the governing body and audited by a person who has been granted a certificate by the Government under the Chartered Accountants Act, 1949 or by a special auditor approved by the Government shall also be filed with the Registrar of Companies, at the same time as required by Section 4.

(2) A filing fee of Rs. 3 each shall be paid along with the list and the balance-sheet and copy of alteration to rules respectively referred to in the Section 4 and sub-sections (1) and (6) of Section 4-A. The said fee may be paid either by cash or crediting the amount to Government Treasury and by attaching the duplicate challan to the documents.

(3) All societies registered under this Act shall hold every year a general meeting at which the report of the management of the institution for the previous year, together with the audited copy of the balance-sheet, receipts and expenditure statement and the auditor's report shall be submitted for approval.

(4) A special meeting may be convened at any time on requisition of the President or the Chairman of the Executive Committee, if any, or on the requisition of not less than three members of the Executive Committee or seven members of the general body of the Society, who shall state in writing the business for which they wish the meeting to be convened. The Secretary shall convene a meeting of the Society before the lapse of ten days from the date of receipt of the requisition.

(5) If a member has no registered address in the Union territory and has not furnished to the Society an address within the Union territory for serving notice to him, a notice advertised in two newspapers (one in English and the other in any of the vernacular languages) circulating in the neighbourhood of registered office of the Society shall be deemed to be duly given to him on the day on which the advertisement appears.

(6) A copy of every alteration made in the rules and regulations of the Society, certified to be a correct copy in the manner prescribed as aforesaid shall be sent to the Registrar within fifteen days of making of such alterations.

(7) If the Society make default in complying with the requirements of Sections 4 and 4-A, it shall be liable to a fine not exceeding fifty rupees." —Pondi. Act XIX of 1969, S. 4 (1-1-1970).

**Assam**

In its application to the State of Assam, after Section 5, insert the following new section, namely :

**"5-A. Books of account and audit.**—(1) Every society shall keep at its registered office proper books of account in which shall be entered accurately—

(a) all sums of money received and the source thereof and all sums



of money expended by the Society and the object or purpose for which such sums are expended ;

(b) the assets and liabilities of the Society.

(2) Every Society shall have its account audited once every year by a duly qualified auditor and have a balance-sheet prepared by him. The auditor shall also submit a report showing the exact state of the financial affairs of the Society. Three copies of the balance-sheet and the auditor's report shall be certified by the auditor.

*Explanation.*—A duly qualified auditor means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 or a person approved by the Registrar of Societies in this behalf.

(3) If the President, Secretary or any other person authorised in this behalf by a resolution of the governing body of the Society fails to comply with the provisions of sub-section (1) or sub-section (2) he shall be punishable with fine which may extend to twenty rupees for every day after the detection of the default during which the default continues." —Assam Act XIII of 1967, S. 4 (18-8-1967).

**Rajasthan.**—A new Section 4-A has been added to the principal Act by Rajasthan Act No. 28 of 1958, as under :

"4-A. (1) Together with the list mentioned in Section 4 there shall be sent to the Registrar a statement showing all changes during the year to which the list relates in the personnel of the governors, directors, trustees or members of the council, committee or other governing body to which the management of the affairs of the society is entrusted and also a copy of the rules and regulations of the society, corrected up-to-date, and certified to be a correct copy by not less than three of the governors, directors, trustees or members of the governing body.

(2) A copy of every alteration made in the rules and regulations of the society, certified to be a correct copy in the manner prescribed as aforesaid, shall be sent to the Registrar within fifteen days of the making of such alteration."

### Section 4-B

#### States Amendments

(ii) After Section 4-A, insert the following :

"4-B. Balance-sheet and auditor's report to be forwarded to Registrar—

(1) Within thirty days after the holding of every annual general meeting, there shall be filed with the Registrar of Societies a copy each of the balance-sheet and auditor's report certified by the auditor under sub-section (2) of Section 5-A.

**Orissa.**—A new Section 4-B has been added to the principal Act by Orissa Act 8 of 1969, as under :

"4-B. *Persons by whom lists, etc. are to be sent*—It shall be the duty—  
(a) of the Chairman or, as the case may be, the President, the Secretary or any other person authorised in that behalf by the rules and regulations of the Society or by a resolution of the governing body of the Society, or

(b) of the Chairman or, as the case may be, the President of the governing body of the Society where there is no such authorisation,

to file the list mentioned in Section 4, or to send the intimation or as the case may be, the copy mentioned in Section 4-A to the Registrar of Societies."

**Rajasthan.**—A new Section 4-B has been added to the principal Act by Rajasthan Act 28 of 1958 as under :

*"4-B. Penalty for non-compliance of Section 4 or Section 4-A or for making a false entry.*—(1) If the Chairman, Secretary, or any other person authorised in this behalf by the rules and regulations of the society or by a resolution of the governing body, fails to comply with the provisions of Section 4 or Section 4-A, he shall, on conviction, be punishable with fine which may extend to five hundred rupees, and in case of a continuing breach, with a further fine not exceeding fifty rupees for each day during which the default is continued after the first conviction for such offence.

(2) If any person wilfully makes or causes to be made any false entry in, or any omission from, the list filed under Section 4 or any statement or copy of rules and regulations or of alteration therein sent to the Registrar under Section 4-A, he shall, on conviction, be punishable with fine which may extend to two thousand rupees."

## Section 4-C

### States Amendments

**Orissa.**—A new Section 4-C has been added to the principal Act *vide* Orissa Act No. 8 of 1969, as under :

*"4-C. Offence.*—(1) If any person who is required so to do under the preceding section fails without reasonable cause to comply with the provisions thereof, he shall, on conviction, be punishable with fine which may extend to one hundred rupees.

(2) If any person wilfully makes or causes to be made any false entry or alteration in, or any omission from, the list filed under Section 4 or any statement or copy of rules and regulations sent to the Registrar of Societies under Section 4-A, he shall, on conviction, be punishable with fine which may extend to five hundred rupees.

**Rajasthan.**—A new Section 4-C has been added to the principal Act, *vide* Rajasthan Act No. 28 of 1958, as under :

*"4-C. Cognizance of offences under Section 4-B.*—No Court inferior to that of Magistrate of the first class shall try any offence under Section 4-B nor shall cognizance of any such offence be taken except on a complaint made in writing by the Registrar or any person authorised by him in this behalf."

**5. Property of society how vested.**—The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings,

civil and criminal, may be described as the property of the governing body of such society by their proper title.

## SYNOPSIS

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|------------------------------------|-------------------------------------|
| 1. Modified law in certain States. | able.                               |
| 2. English Law.                    | 4. Trustee.                         |
| 3. Property—Movable—Immovable.     | 5. Property belonging to a society. |

**1. Modified law in certain States.**—In the following States modified provisions have been made in their respective State Acts which are as follows :

**Andhra Pradesh.**—“*Property of society how vested*—The property, movable and immovable, belonging to such registered Society, if not vested in trustees, shall vest in the managing committee of the society, and in all judicial proceedings relating to such property, shall be deemed to be the property, of the managing committee.”<sup>1</sup>

**Bihar.**—In Section 5 of the Principal Act, for the words “Civil and Criminal”, the words “Civil, Criminal and Revenue” shall be *substituted* and shall be deemed always to have been *substituted*, *vide* Bihar Act No. 2 of 1960.

**Mysore.**—“*Property of society how vested.*—The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, Civil and Criminal, may be described as the property of the governing body of such society by their proper title.”<sup>2</sup>

**Rajasthan.**—“*Property of society in whom vested.*—(1) The property, movable, and immovable, belonging to or held or acquired by a society registered under this Act, if not vested in trustees in trust for such society, shall be deemed to be so vested for the time being in the governing body of such society, and in all proceedings, Civil and Criminal, may be described as the property of the governing body of such society.

(2) Where any such property is vested or is to become vested in trustees in trust for any society registered under this Act and any new trustees have been appointed under and in accordance with Section 5-A, the property shall notwithstanding anything contained in any instrument or in the rules and regulations of the society, become vested without any conveyance or other assurance, in such new trustees and the continuing old trustees jointly or, if there are no old continuing trustees, in such new trustees wholly upon the same trust, and with and subject to the same powers and provisions, as it was vested in the old trustees.”<sup>3</sup>

**2. English Law vesting of property.**—All property belonging to a registered society, whether acquired before or after the society is registered, is vested in the Trustees, for the time being, of the society, for the use and benefit of the society and the members, and of all persons claiming through the members, according to the Rules.

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1. Section 6 of A. P. Act No. 1 of 1950 F.
  2. Section 6 of Mysore Act No. III of 1904.
  3. Section 5 of Rajasthan Act No. XXVIII of 1958.



The property of a registered branch vests wholly or partly in the Trustees for the time being of that branch, or of any other branch of which that branch forms part, or, if the Rules of the society so provide, in the Trustees of the society. The property vests for the use and benefit either of the members of the branch in question and persons claiming through those members or of the members of the society generally and persons claiming through them, according to the Rules of the society.

**Devolution on death, etc., of Trustee.**—Upon the death, resignation, or removal of a Trustee of a registered society or branch, the property vested in him vests in the succeeding trustees, either solely or with any surviving or continuing trustees, and, until the appointment of succeeding Trustees, in the surviving or continuing Trustee. The property, whether real or personal, vests as personal estate and subject to the same trusts. No conveyance or assignment is required, except in the case of stocks and securities in the public funds of Great Britain and Northern Ireland, which must be transferred.

**Transfer of stock by direction of Chief Registrar.**—When a trustee or former trustee, appointed either before or after registry of a society or branch is absent from the British Islands, bankrupt, or becomes bankrupt or files any petition or executes any deed for liquidation of his affairs by assignment or arrangement or for composition with his creditors, or becomes a person of unsound mind, or is dead, or has been removed from the office of Trustee, or when it is unknown whether such a Trustee is living or dead, the Chief Registrar may, on application in writing from the Secretary and three members of a registered society or branch, and on proof satisfactory to him, direct a transfer of stock transferable at the Bank of England or Bank of Ireland which is vested in that Trustee whether jointly with another or others or solely. The transfer is directed to be made by the surviving or continuing Trustees, or, if there is no such Trustee, or if the Trustees refuse or are unable to make the transfer, and the Chief Registrar so directs, the transfer is made by the Accountant-General or Deputy or Assistant Accountant-General of the Bank of England or the Bank of Ireland as the case may be. The banks are indemnified for any thing done by them or their officers under a direction of the Chief Registrar against any claim or demand of any persons injuriously affected thereby.<sup>4</sup>

**3. Property.**—‘Property’ includes movable and immovable—

**Movable property.**—Section 2(9) of the Indian Registration Act XVI of 1908, defines movable property. “ ‘Movable

4. Halsbury's Laws of England, 3rd Edn. Vol. 18, pp. 72, 73.

property' includes standing timber, growing crops and grass, fruit upon and juice in trees and property of every other description, except immovable property."

The definition of this expression is also given in certain other statutes, viz., Section 3(34) of the General Clauses Act (Act X of 1897); Section 3 of the Transfer of Property Act (Act IV of 1882) and Section 22 of the Indian Penal Code. This expression is generally meant as all corporeal things of every description except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

It may be noted that a contract to cut trees of all kinds excepting such trees as produce fruit or other forest produce for the manufacture of charcoal is not a contract for transfer of an interest in immovable property. Trees, other than fruit trees, or other forest produce are standing timber within the meaning of the Transfer of Property Act and are, consequently, not immovable property but only movable property.<sup>5</sup>

**Immovable property.**—The Transfer of Property Act does not define 'immovable property'. The definition of this term, as given in the General Clauses Act, is that this term includes land benefits arising out of a land and things attached to the earth. Section 2(6) of the Indian Registration Act defines 'immovable property' as follows:

"'Immovable property' includes land; building, hereditary allowances, rights to way, lights, ferries, fisheries or any other benefits to arise out of land and things attached to the earth, or permanently fastened to anything which is attached to the earth but not standing timber, growing crops or grass."

**4. Trustee.**—Section 3 of the Indian Trusts Act (Act No. II of 1882), defines 'trust' as an obligation annexed to the ownership of property, and arising out of a confidence reposed in, and accepted by, the owner, or declared or accepted by him for the benefit of another and the owner. The person in whom the confidence is reposed is called 'trustee'. The trust subjects the person by whom property is held to equitable duties to deal with property for the benefit of another person.<sup>6</sup> The expression 'trustee', as used in the Societies Registration Act, does not include a constructive trustee.<sup>7</sup> The intention of the Act in using the phrase 'for the

5. *Ali Sahib v. Mohidin Sadiq*, 12 IC 375; 13 Bom LR 874; *Mahonarsh Ardesht Davirwala v. Ismail Ibrahim Patel*, 38 Bom LR 158; AIR 1936 Bom 167; *Math Das v. Jadubir Thapar*, (1906) AWN 4: 3 ALJ 138.

6. *S. Ripudaman v. Surinder Kumar & Others*, AIR 1959 Punj 92.

7. *In re United English Scottish and Assurance Co.*, (1868) 3 Ch App 787.



time being' in the present section is not ambiguous as this phrase explicitly means existing at the time of the passing of the Act or in the future.<sup>8</sup>

**5. Property belonging to a society.**—The fact that property is deemed to be vested in the trustees or governing body does not constitute any beneficial interest of the trustees or governing body in the property and the property must be deemed to be the property of the society.<sup>9</sup> It is the settled law that where there is a trust, the right of the trustee has to be determined in the light of the trust deed or trust scheme, and, therefore, any act done by the trustee in contravention of the trust deed or trust scheme is invalid.<sup>10</sup>

Where before registration of the society the property vested in the trustees it becomes the property belonging to the society as soon as it is registered under the Act. An incorporated association can hold property being a legal entity, and, therefore, there is no transfer of ownership in the above case.<sup>11</sup>

It should also be noted that the Act does not create any beneficial interest in the property belonging to a society for its members or the members of the governing body, other than that of bare trustees.<sup>12</sup>

Under Section 5 of the Societies Registration Act, the suit property should be deemed to be vested in the governing body of the said society and the property may be described as the property of the governing body of such society by their proper title in all proceedings. When once the Association was registered under the Societies Registration Act, the body has got a legal entity capable of suing in its corporate capacity. Thus where an association was a collection of the members of the original Tappers Union and they had formed this Association with the object of recovering the property from the President of the old association. That was not a suit filed by some members of the original Union against the other members of the Union. That was a suit instituted by a newly formed association who had got a legal personality to recover the property from the said President who was not a member of the new Association. After the dissolution of the Tappers Union, the property which was then in the possession of the said President was a trust property and the members of the plaintiff Association were entitled to trace the trust property

8. *In re Russell Institution, Figgins v. Bhagias*, (1898), 2 Ch 72: 32 Digest 551.

9. *Harinarayan Shaw v. Gobardhandas Sharaff*, 89 CLJ 84: AIR 1958 Cal 140.

10. *Mewalal v. Ram Lakhan*, 1956 UPRD 71.

11. *Rani Gagarmal v. Bawa Kesur Singh*, 41 PR (1897) 182.

12. *Pamulapati Buchi Naidu College Committee v. State of Andhra Pradesh*, AIR 1958 MP 773.



and recover it from the person who was in unlawful possession of the same. *Held*, that as far as the said President first defendant was concerned, he had no right to question whether the new Association has got title to the suit property or not. When once it is clear that he had no title to the suit property and he himself conceded that he had no title to the property, it was his duty to hand over possession to a legally formed Association *i. e.*, the plaintiff. If any one of the members of the ex-Tappers Association wanted to protect the property he was entitled to do so by instituting proper proceedings against the Association, but the said President had no *locus standi* to contend that the suit was not maintainable. Therefore the suit property being a trust property that the said President was held to be in unlawful possession of the same and that the plaintiff was entitled to recover the property from the said President.<sup>13</sup>

## Section 5-A

### States Amendments

- (2) *Penalties*.—If the President, Secretary or any other person authorised in this behalf by a resolution of the governing body of the society fails to comply with the provisions of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees.” —Assam Act XIII of 1967, S. 3 (18-8-1967).

**Note.**—Amendments made by Assam Act 7 of 1957 have been extended to the then Union territories of Manipur and Tripura. —*See* G. S. Rr. 85 and 86 of 1960, *Gaz. of India*, 1960, Pt. II, S. 3(i), pp. 145, 146.

**Rajasthan**—A new Section 5-A has been added to the principal Act, *vide* Rajasthan Act No. 28 of 1958 as under :

“5-A. *Appointment of new trustees*.—(1) When it becomes necessary to appoint a new trustee or trustees in the place or in addition to any trustee or trustees in whom any property belonging to or held or acquired by a society registered under this Act is vested in trust for such society, such new trustee or trustees may be appointed—

- (a) in the manner prescribed by any instrument by which such property is so vested or by which the trust on which it is held has been declared, or
- (b) in case such manner has not been so prescribed or such new trustee cannot for any reason be appointed in such manner—
  - (i) in such manner as may be agreed upon by the members of such society, or
  - (ii) by a majority of not less than two-thirds of such members actually present at the meeting at which the appointment is made.

(2) Every appointment of a new trustee made under sub-section (1) shall be made to appear by a Memorandum under the hand of the

13. *Karur Taluk ex. Tappers Association v. Ramaswami Nadar*, AIR 1967 Mad 260 at 261.

Chairman for the time being of the meeting at which such appointment is made, attested by two or more credible witnesses to the presence of such meeting, and such Memorandum shall be deemed to be a document compulsorily registrable under the Indian Registration Act, 1908 (Central Act XVI of 1908)."

**6. Suits by and against societies**—Every society registered under this Act may sue or be sued in the name of the President, Chairman, or principal Secretary, or Trustees, as shall be determined by the rules and regulations of the Society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion :

Provided that it shall be competent for any person having a claim or demand against the Society, to sue the President or Chairman, or principal Secretary or the Trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

### SYNOPSIS

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|-----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| 1. States Amendments.                                                                                     | 8. Suit in respect of internal management by individual members—Maintainability—Normal rule and exception. |
| 2. English Law.                                                                                           | 9. Suits by and against unregistered societies.                                                            |
| 3. Scope.                                                                                                 | 10. Provisions whether mandatory.                                                                          |
| 4. Suits by and against registered societies.                                                             | 11. Delegation of powers to institute and defend suits.                                                    |
| 5. Society registered under a particular name—Whether can adopt a different name for institution of suit. | 12. Error in description of representation.                                                                |
| 6. Irregularity in filing plaint whether curable.                                                         | 13. Wrong done to society.                                                                                 |
| 7. Whether registered society can be deemed to be citizen for enforcing fundamental rights.               |                                                                                                            |

**1. States Amendments.**—In the following States modified provisions have been made in their respective Acts which are given below :

#### Andhra Pradesh

*"Suits by and against societies.*—Any such registered society may sue or be sued in the name of the chairman, or secretary, or trustees, as shall be determined by the rules of the society, and if there are no rules in this behalf, in the name of such person as shall be nominated by the managing committee for this purpose :

Provided that when a suit is instituted against such society, the plaintiff shall apply to the managing committee of the society to nominate any person to be made the defendant, and if the managing committee fails to nominate any person within a month or if, in the

circumstances, the matter cannot be deferred so long, the plaintiff may sue the society in the name of chairman or secretary or trustees.”<sup>1</sup>

### Mysore

\* *“Suits by and against societies.*—Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion :

Provided that it shall be competent for any person having a claim or demand against the society, to sue the president or chairman, or principal secretary or the trustee thereof, if on application to the governing body some other officer or person be not nominated to be the defendant”.<sup>2</sup>

### Rajasthan

*“Suit by and against societies.*—Every society registered under this Act may sue or be sued such name as shall be determined by the rules and regulations of the society and, in default of such determination, in the name of the chairman or the secretary or trustees thereof”.

**2. English Law—Proceedings by or against registered societies.**—The trustees of a registered society or branch, or officers by its Rules, may bring or defend actions or legal proceedings with respect to any property, right, or claim of the society or branch, and may sue and be sued in their proper names without other description than the title of their office. The liability of trustees to be sued in proceedings with respect to a right or claim of the society or branch is restricted to cases in which the right or claim concerns the property of a society or branch, and does not therefore extend to all cases where the funds of the society or branch are threatened by a claim for damages. In proceedings concerning property vested in the Trustees of a registered society or branch the property may be stated to be the property of the Trustees in their proper names as Trustees for the society or branch without further description.

A registered society, if sued in the society's name, may appear either in that name, with the addition of the words “registered under the Friendly Societies Act, 1896”, or by the Trustees or other officers appointed to sue or be sued on its behalf.

The Attorney-General is not a necessary party where the proceedings concern a non-charitable friendly society.

Proceedings may be brought against a Trustee of a society or branch by the other Trustee or Trustees.

**Service of summons, writ, etc., against officers.**—Where proceedings are taken against an officer or other person sued on behalf of a registered society or branch, the officer or other

1. Section 7 of A. P. Act No. of 1350 F.

2. Section 7 of Mysore Act No. III of 1904.

3. Section 7 of Rajasthan Act No. XXVIII of 1958.



person may be personally served. Alternatively, in such proceedings, service may be effected by leaving a true copy of the summons or other process at the registered office of the society or branch, or at any place of business of the society or branch within the jurisdiction of the Court in which the proceeding is brought, or if that office or place of business is closed, by posting the copy on the outer door thereof.

Where the service is not made personally or by leaving a true copy of the summons or other process at the registered office of the society or branch, a copy must be sent in a registered letter addressed to the Committee at the registered office of the society or branch, and posted at least six days before any further step is taken on the proceedings.

Where proceedings are taken against a society or branch for the recovery of any fine under the Friendly Societies Act, 1896, the summons or other process may be served by leaving a true copy thereof at the registered office of the society or branch, or at any place of business of the society or branch within the jurisdiction of the Court in which the proceeding is brought, or, if that office or place of business is closed, by posting the copy on the outer door thereof.<sup>4</sup>

**3. Scope.**—The section is applicable to the societies registered under the Act. In the absence of registration under the Act, the society has no juridical status, and therefore, no suit can be instituted by or against it.<sup>5</sup> The society is an association of individuals which is neither a corporation nor a partnership, but which comes to exist with certain specified objects. If it is not registered as a society under the Act, it would have the character of a club which cannot sue or be sued except in the name of all its members or in the name of the Secretary or other members of the executive body on their own behalf and on behalf of other members of the association. It would not be competent to a Secretary or other members of the executive body of the club or association to sue or be sued alone in respect of matters in which the club or association is interested even though authority in that behalf has been conferred on them by all members of the club or association.<sup>6</sup>

**4. Suit by and against registered societies.**—A society registered under the Societies Registration Act is a legal entity

4. Halsbury's Laws of England, 3rd Edn., Vol. 18, at pp. 113, 114, 115.

5. *Jamboodas Devidas Chawre v. Chawre Digamber Jain Boarding*, 31 NLR 15: AIR 1934 Nag 207.

6. *Satyavarat Sidhantalankar v. Arya Samaj, Bombay*, 48 Bom LR 341: AIR 1946 Bom 516.

capable to sue and be sued in its corporate capacity.<sup>7</sup> The registration confers on the society a legal personality and consequently any contract entered into by it would be legally enforceable, unless it was vitiated in law for some or the other reason.<sup>8</sup> It should, however be noted that the society registered under the Act is quite distinct from a partnership. It has nothing in common with a partnership. A society is a collection of individuals united into one body under a special denomination having perpetual succession under an artificial form and vested with the powers of taking and granting properties, contracting obligations and of suing and being sued.<sup>9</sup>

The Act lays down a particular procedure for the suits by or against the registered societies, viz.; every society registered under the Act may sue or be sued in the name of the President, Chairman or Principal Secretary, or trustees, as shall be determined by the rules and regulations of the society, and in default of such determination in the name of such person as shall be appointed by the governing body of the society. The person who has any claim or demand against the society may sue the society in the name of its President, Chairman, Principal Secretary or trustees, if a particular person is not nominated by the governing body of the society. A registered society has also a right to sue and to be sued itself, and in such cases the question as to whether the rules empowered the society to sue or to be sued for and on behalf of the society need not be gone into.<sup>10</sup> Thus, where a suit is filed by some members of the society against the other members of the society, the suit does not fail on the ground that the society itself has been impleaded as the plaintiff as well as the defendant.<sup>11</sup>

The question as to what is exactly the legal character of a Society registered under the Act has been the subject-matter of consideration in several decisions with reference to relevant decisions of the English Court under Friendly Societies Act or the Trade Union Act. The gist of those decisions is that a Society registered under the Act, is not body corporate or a corporation having a distinct legal entity from the members constituting it in the sense a company incorporated under the Indian Companies Act has or a Society registered under the Co-operative Societies Act has, yet it has its own identity, personality, or entity which, for all purposes

7. *Boppana Rukminamma Mayanti v. Maganti Venkata Ramdas*, AIR 1940 Mad 949.
8. *Radha Swami Satsang Sabha v. Hanskumar Kishanchand*, AIR 1954 MP 172.
9. *Kyd on Corporations*, (1743) Vol. 1, p. 13.
10. *Managing Committee of National English Middle School v. DIOS*, 1957 ALJ 970.
11. *Satyavarat Sidhantalankar v. Arya Samaj, Bombay*, 48 Bom LR 341 : AIR 1946 Bom 516.



is not identical with that of the members constituting it. A Society when registered comes into existence as a registered Society and has properties of its own. Although legal title in the properties may vest in the trustees or Board of Governors yet the equitable title, to use the English phraseology, vests in the Society.

In many cases decided by various High Courts, a view had been taken that Section 6 of the Act is an enabling provision and the Society registered under the Act can sue and be sued in its own name: vide *A. S. Krishnan v. M. Sundaram*, [AIR 1941 Bom 312]; *Satyavart Sidhantalankar v. Arya Samaj, Bombay*, [AIR 1946 Bom 516]; *P. B. N. College Committee v. Govt. of Andhra Pradesh*, [AIR 1958 Andh Pra 773] and *Radhaswami Satsang Sabha v. Hans Kumar*, [AIR 1959 Madh Pra 172]. In none of those cases, however, there was any occasion for decision of the question as to whether a registered Society registered under the Act is distinct in all respects from the members constituting it or whether all the members in their own names could file suit or be sued in respect of a matter relating to the Society. Bhagwati, J., discussed this point elaborately in the Bombay case *Satyavart Sidhantalankar*, [AIR 1946 Bom 516.] His Lordship took the view that once a society is registered under the Act, "the Society enjoys the status of a legal entity apart from its members constituting the same and is capable of suing or being sued".

A Society registered under the Act may not be a body corporate, quite distinct from its members. But without going into the debatable question as to whether it would have its own legal entity or not, suffice it to say that yet it has got a separate existence for many purposes.

Where most of the members constituting the Society were *ex officio* holders of office in the Central Government or various State Governments, yet, when they agreed to form a Society they brought into existence a new body called the Sainik Schools Society to raise funds either from the Government as the Memorandum of Association showed or from other sources to start Sainik Schools, to control its management through the Board of Governors, as also through the local Board of Governors and not to leave the control in the hands of either the Central Government, or the State Governments.

The very fact that Chief Ministers of various States had combined with the Defence Minister of the Centre to form a Society, indicated that the control or management of the Society or its institution was not to be left in the hands of any Government either the Central or of any one State. It could not be so left. And that was the reason that for the purposes of establishing institutions like Sainik Schools, a new body was formed in the



shape of a registered Society under the Act. As soon as that new body was formed, any person agreeing to serve under the Society or in any of its institutions must be deemed to hold the post under the Society and not to hold any civil post either under the Union or the State.<sup>12</sup>

It was held in the case of *Ganga Sahai v. Bharat Bhan*, [AIR 1950 All 480], that a Society registered under the Act even if it be not a corporation in the full sense is certainly a legal person and letters of administration could be granted to such Society.

The right vests in the society to sue or be sued. The provision in Section 6 of the Act which begins with the words "may sue or be sued" in the name of one of its officers cannot take away the right of the Society itself to sue or be sued in its own name. Section 6 is merely an enabling provision that the suit be brought by the Society or the Society itself be sued in the name of the President, Chairman, or Principal Secretary.

It was held by the Calcutta High Court in the case of *Sonar Bangla Bank Ltd. v. Calcutta Engineering College*,<sup>13</sup> that Section 6, which is only permissive, does not make a suit against a registered society in its own name incompetent. The same view was taken by the Allahabad High Court in the case of the *Managing Committee of the National English Middle School controlling and running Nehru Rashtriya Inter College, Manglour Town, through Dr. Sohan Lal Datta, Manager and Secretary of the Society, Saharanpur v. The District Inspector of Schools, Saharanpur*,<sup>14</sup> and it was held that a writ petition could be filed by the registered Society in its own name through its Secretary. The same view finds support from the case of *Satyavarat Sidhantalankar v. Arya Samaj, Bombay*,<sup>15</sup> decided by the Bombay High Court.

Thus where a suit was brought in the name of the Sabha through its Secretary. In view of the legal position that a society registered under the Act is a legal person, entitled to sue and Section 6 of the Act being merely permissive, the form of the suit cannot be said to be defective.<sup>16</sup>

Section 6 of the Act, does not take away the inherent right of a society registered thereunder to sue or be sued in its own name. If in fact it does not lose that right then as a result of that, it, develops the character like that of a *quasi*-corporation.<sup>17</sup>

12. *K. C. Thomas v. R. L. Gadeock*, AIR 1970 Pat 163 at 165, 166.

13. AIR 1960 Cal 409.

14. 1956 All LJ 790.

15. AIR 1946 Bom 516.

16. *Shanti Sarup v. R. S. Sabha*, AIR 1969 All 248 at 257-258.

17. *Khiri Ram Gupta v. Nannalal J. Parekh*, AIR 1964 Pat 114 at 116.

Where the members of the original Tappers Trade Union formed themselves into another Association and registered it under the Societies Registration Act, with the main object of recovering the property from the President of the original Union. The new Union had a legal entity to take proceedings in order to recover the property from the said President. Before the new association was registered the members convened a general body meeting for forming another Association and passed a resolution authorising the Secretary to take proceedings against the said President. The new Association was registered a couple of days after the resolution. It was contended that the resolution was *ultra vires* and not binding on them since it was passed before the Association was registered. *Held*, that by the time the Association was registered Articles of Association and other things were framed and submitted to the Registrar. Still it was contended that even the present Rule did its not provide that the Secretary can file the suit. *Held*, further that all these contentions were too technical and advanced only for the purpose of squatting on the property. When once it is found that the property does not belong to the said President he cannot be allowed to contend that the plaintiff has no *locus standi* to institute the suit. Though at the time of passing of the resolution the Society was not registered, when the suit was filed the Association was registered under the Societies Registration Act and the Secretary was competent to file the suit and take proceedings to recover the property from the said President first defendant.<sup>18</sup>

**5. Society registered under a particular name--Whether can adopt a different name for institution of suit.**—A legal entity may choose to have itself described by a particular name for a particular purpose and it naturally follows that if a legal entity has by proper method given to itself or assumed a name for the purpose of suing and being sued, a suit brought in that name must be regarded as a suit by that legal entity, provided of course that it has been instituted by a person empowered to do so.

Where, therefore, the Society which had been registered was “the Governing Council of the Kayastha Pathshala (Prayag), Allahabad” the Society had adopted a shorter and more convenient and also the commonly known name for the institution of suit by and against it.

Rule 3 of the Rules of the Governing Council which was as follows :

“All properties which are held by and in the name of the ‘Kayastha Pathshala’ vest in the Governing Council and simi-

18. *Karur Taluk ex-Tappers Association v. Ramaswami Nadar*, AIR 1967 Mad 260 at 261.

larly all properties acquired hereinafter by or in the name of the 'Kayastha Pathashala' by way of endowment or otherwise shall vest in the Governing Council of the Kayastha Pathshala."

*Held* that it will thus appear that the registered Society has also for the purpose of vesting and acquisition of property recognised and assumed the shorter name. The suit must, therefore, be held to have been properly brought in the name of the Kayastha Pathshala (Prayag), Allahabad. The plea that the plaintiff is not a juristic person and is consequently not entitled to maintain the suit is, therefore, plainly misconceived and unsustainable.<sup>19</sup>

**6. Irregularity in filing plaint whether curable.**—Where it was contended that the election of the President having been declared invalid by the decree passed on the basis of the award given by the arbitrators the appointment of a Vice-President made by him should be deemed to have become totally ineffective. *Held* that the institution of suits for possession of property belonging to the institution will certainly constitute one of the duties of the President and the instant suit should, in these circumstances, be regarded as having been instituted by the Kayasthya Pathshala through the President. However, after the election of P. as President the plaint was amended and it was allowed to be signed and verified by him. No question of limitation was involved and the amendment allowed to be made by the Court and the signature and verification of P. on the plaint cured it of such defect as it might have had.<sup>20</sup>

**7. Whether registered Society can be deemed to be citizen for enforcing fundamental rights.**—In *State Trading Corporation of India, Ltd. v. Commercial Tax Officer*,<sup>21</sup> and *Tata Engineering and Locomotive Co. Ltd. v. State of Bihar*,<sup>21a</sup> the Court adopted the doctrine of what is called lifting the veil. In the first case it was held that the *State Trading Corporation*, a company registered under the Indian Companies Act, 1956, is not a citizen within the meaning of Article 19 of the Constitution and cannot ask for enforcement of fundamental rights granted to citizens under the said Article. In the latter case, it was held that if the Company itself cannot make an application for enforcement of fundamental rights, shareholders cannot be permitted to do so by permitting the lifting of the veil.

19. *Krishna Kumar Sinha v. The Kayastha Pathshala (Prayag), Allahabad*, AIR 1966 All 570 at 574.

20. *Krishna Kumar Sinha v. The Kayastha Pathshala (Prayag), Allahabad*, AIR 1966 All 570 at 575.

21. AIR 1963 SC 1811.

21a. AIR 1965 SC 40.



In *Servants of India Society, Poona-4 v. The Charity Commissioner of Bombay*,<sup>22</sup> it was held that a Society registered under the Societies Registration Act, 1860, is not a corporation, but is merely an association of persons, though for certain purposes it is recognised as an entity. This view has been later affirmed by the Supreme Court in *Board of Trustees, Ayurvedic and Union Tibia College, Delhi v. State of Delhi*.<sup>23</sup> Though, therefore, such a Society can sue through its President by reason of the provision of the Act, the suit must be still regarded as being on behalf of the members who constitute the Society. It is indeed not every association of persons who do business or carry on trade that can be regarded as falling within the decision of the Supreme Court in the *State Trading Corporation* case,<sup>24</sup> To extend it to such association would mean that it would extend to a partnership or even a joint family inasmuch as a partnership can sue in its partnership name and the joint family can sue through its *Karta*. The petition by a registered society must be regarded as one made on behalf of the members of the Society who are all citizens of India and it is, therefore tenable.<sup>25</sup>

**8. Suit in respect of internal management by individual members—Maintainability—Normal rule and exception.**—It is true that a Society is a juristic person separate from its members as is a company.<sup>26</sup> Therefore the normal rule is that in respect of the internal management of the Society the Society as such and not its individual members can sue. There have been a large number of cases both in India as also in England where courts had to consider whether a suit can be brought in respect of the internal management of a company otherwise than in the name of the company itself, by individual members thereof. There is good authority for the proposition that the case of Society registered under the Act is similar to that of a club or a Joint Stock Company.<sup>27</sup> A full Bench of the Allahabad High Court in the case of<sup>28</sup> has held that the same principles apply to a club which applied to a Joint Stock Company. In the leading case on the subject *Foss v. Harbottle*,<sup>29</sup> it was held that the normal rule is the corporation should sue in its own name and in its corporate character, or in the name of some one whom the law has appointed to be its repre-

22. AIR 1962 Bom 12.

23. AIR 1962 SC 458.

24. AIR 1963 SC 1811.

25. *The Sakharikherda Education Society, Sakharikherda, v. The State of Maharashtra*, AIR 1968 Bom 91 at 94.

26. See *B. Rukminamma v. M. Venkata Ramadas*, AIR 1940 Mad 949.

27. *A. S. Krishna v. M. Sundaram*, AIR 1941 Bom 312.

28. 1947 All LJ 637 : AIR 1948 All 145.

29. (1843)2 Hare 461.

sentative. *Mozity v. Alston*,<sup>30</sup> is an authority for the proposition that ordinarily individual share-holders cannot sustain a Bill in their own names in respect of a matter common to all or relating to the internal management of the company. In the case of *Mac Doughall v. Gardiner*,<sup>31</sup> the Court held that it could not interfere in the internal management of a company and dismissed an action brought by one share-holder on behalf of himself and all other share-holders excluding the Directors, against the Directors and the company complaining against certain matters decided at a meeting. To the same effect is the decision of the Bombay High Court in *Bhajekar v. Shinkar*,<sup>32</sup> and of the Madras High Court in *Nagappa v. Madras Race Club*.<sup>33</sup> The Bombay High Court took the same view in *S. Sidhantalankar v. Arya Samaj, Bombay*,<sup>34</sup> which was a case of a registered Society. This general rule however has got an exception as pointed out in the Madras and Bombay cases referred to above. The exception is that a share-holder can bring an action even with regard to internal management of a company if (1) the action of the majority is *ultra vires* the company; (2) where the act complained of constitutes a fraud on the minority; (3) where the action of the majority is illegal and (4) where a special resolution is required by the Article of the Company and the assent of the majority to such special resolution is obtained by a trick, or even where a company authorised to do a particular thing only by a special resolution does it without a special resolution duly passed.<sup>35</sup>

**9. Suit by and against unregistered societies.**—An unregistered society has no legal personality, and hence, it cannot sue and be sued in its name. However, the members of the executive committee of an unregistered society may bring an action on behalf of the society, and if any member refuses to sign the plaint, he may be impleaded as defendant.<sup>36</sup>

**10. Provisions whether mandatory**—The provisions of the Act do not indicate that the use of the name of a registered society in legal proceedings is compulsory. It is rather permissive on the ground of convenience. However, it is the intention of the Legislature that for all purposes including the legal proceedings

30. (1847) 16 LJCh 217.

31. (1875) 1 Ch D 13.

32. AIR 1934 Bom 243.

33. AIR 1951 Mad 831.

34. AIR 1946 Bom 516.

35. *Ram Charan v. Shridhar*, AIR 1962 All 610 at 617-618, reversing AIR 1959 All 598.

36. *Taff Vale Railway Co. v. Amalgamated Society of Railway Servants*, (1901) AC 426: 1 QB 170.



the registered name of the society should be used to denote the union as an incorporated society. It has been held that the provisions contained in Section 6 of the Act for institution of suits by or against the society are not mandatory and do not militate against a Society registered under the Act suing or being sued in its registered name, and, therefore, since the Act does not bar institution of suits by or against the society in its registered name, a rule framed by the society providing for the institution of suits by or against it in its corporate name cannot be held as *ultra vires* of the Act.<sup>37</sup>

**11. Delegation of powers to institute and defend suits.**—Section 6 of the Act authorises the governing body to appoint the delegate for the purpose of representing the society in the absence of any such delegation made in the rules and regulations of the Society. The governing body is competent to delegate such powers to the office-bearers or trustees or some other person and when a delegation is duly made to some person to institute a suit or to defend a suit, the suit or the defence, as the case may be, is legally maintainable.<sup>38</sup> The governing body is authorised to appoint a person for this purpose and the Society may sue or be sued in the name of such person so appointed.<sup>39</sup>

**12. Error in description of representation**—Where the question is whether a suit brought against a Society is vitiated because the society as such is not described as the defendant but only its President or Chairman or Trustee it has been held that when the plaint makes it clear that the suit is against the society, the society cannot contend that the suit is vitiated in law.<sup>40</sup> Also the omission to describe the Society as the defendant in a decree does not vitiate the decree.<sup>41</sup>

**13. Wrong done to society**—In order to redress a wrong done to the Society, it is the general rule that the action should be brought by the Society itself.<sup>42</sup> There is, however, an exception to this general rule. Where the person against whom the action is brought and relief is sought himself holds the management of the society and as such will not permit an action to be brought in the name of the Society, the complaining members may bring an action

37. *Nabadwip Bhajan Asram v. Commissioner of Nababwip Municipality*, AIR 1954 Cut 361.

38. *Harinarayan Show v. Gobardhandas*, 89 CLJ 84: AIR 1953 Cal 140.

39. *Agra Province Zamindar Association v. Prem Mohan Verma*, AIR 1950 All 447.

40. *Radhey Lal v. East India Railway*, AIR 1926 Pat 40.

41. *Ezhumattoor N. S. S. Karayogam v. L. Janki Amma*, 1957 TC 259: AIR 1957 Trav. Cochin, 259.

42. *A. S. Krishnan v. Sundaran*, AIR 1941 Bom 312: 43 Bom LR 362: ILR 1941 Bom 497.



in their own name.<sup>43</sup> However, as the position of the members of the society registered under the Societies Registration Act is similar to that of the share-holders of the company registered under the Companies Act and where the acts of the defendant which were challenged were in respect of the Society it was necessary that the society should have been a party to the litigation. *Held* that it is not competent to plaintiff either alone or representing himself and the other members of the Society other than the defendants to bring a suit.<sup>44</sup>

**7. Suit not to abate.**—No suit or proceeding in any civil court shall abate or discontinue by reason of the person, by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

### SYNOPSIS

- |                                    |                                    |
|------------------------------------|------------------------------------|
| 1. Modified law in certain States. | 4. Perpetual existence of society. |
| 2. English Law.                    | 5. Civil Court.                    |
| 3. Provisions whether mandatory.   | 6. Suits and proceedings.          |
|                                    | 7. Survival of cause of action.    |

**1. Modified law in certain States.**—In the following States modified law in this respect has been enacted to their respective amending Acts which is given below :

#### Mysore

*"Suits not to abate.*—No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person, by or against whom such suit or proceeding shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person."<sup>1</sup>

#### Rajasthan

*"Suits not to abate.*—No suit or proceeding in any civil court shall abate or discontinue by reason of the person, or by or against whom such suit or proceeding shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued but the same suit or proceeding shall be continued in the name of or against the successor of such person."<sup>2</sup>

43. *A. S. Krishnan v. Sundoran*, AIR 1941 Bom 312 : 43 Bom LR 362 : ILR 1941 Bom 497.

44. *Ibid.*

1. Section 8 of Mysore Act No. III of 1904.

2. Section 7 of Rajasthan Act No. XXVIII of 1958.

**2. English law.**—The death, resignation, or removal from office of an officer of a registered society, or any act of the officer after the commencement of proceedings does not cause the abatement or discontinuance of the proceedings.<sup>3</sup>

**3. Provisions whether mandatory.**—The provisions contained in this section are not mandatory to the extent as they do not militate against a registered society suing or being sued in its registered name.<sup>4</sup>

**4. Perpetual existence of society.**—A registered society becomes a body corporate with permanent existence and perpetual succession. Notwithstanding that the members of the society or its governing body fluctuate from time to time, the existence and identity of the society remains perpetual and continuous under the provisions made in the Societies Registration Act.<sup>5</sup> This section makes it clear that the death or retirement from office of a plaintiff or defendant does not cause the abatement or discontinuance of civil proceedings brought by or against a society. The proceedings are continued in the name of or against the successor of such person.

**5. Civil Court.**—Courts constituted for deciding purely civil disputes between persons seeking their civil rights are called as Civil Courts. This term, however, does not include the High Court.<sup>6</sup> But this term comprises the Revenue Courts deciding rent suits and executing rent decrees.<sup>7</sup> A Court must derive its powers from a statute and discharge its duties in a judicial manner. Thus an election tribunal constituted under Section 22 of the U. P. Municipalities Act, being charged with a duty to decide disputes in a judicial manner, is a Court. Parties to an election petition are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. The tribunal, after concluding the enquiry, declares the rights of parties in a definitive judgment and the proceedings during the inquiry approximate in all essential matters to proceedings in a Civil Court.<sup>8</sup>

**6. Suits and proceedings.**—By the expression 'suits and proceedings', appearing in this section, is meant the suits and pro-

3. Halsbury's Laws of England, 3rd Edn., Vol. 18, p. 114.

4. *Nabadwip Bhajan Asram v. Commissioner of Nabadwip Municipality*, 48 Bom LR 341 : 229 IC 84.

5. *Pamulapati Bachi Naidu College Committee v. Govt. of Andhra Pradesh*, AIR 198 AP 7573.

6. *Rai Anath Nath v. Maharaja Srichandra*, AIR 1941 Cal 529.

7. *Pratap Udai Nath Shahdo v. Madan Mohannath Nath Sabi*, 7 IC 787.

8. *Shiv Kumar and Others v. State*, AIR 1963 All 395.

ceedings relating to the disputes of civil rights. It is very difficult to give a comprehensive definition of 'civil rights'. They are not limited to common law rights only but would include *inter alia* any right to property, reputation, status and office of a person though these may be creatures of statutes.<sup>9</sup> The word 'civil' relates to private rights and remedies given to individuals or corporations as members of the community in contradistinction to those which are public and relate to Government. An action, which has for its object, the recovery of private or civil rights, or compensation for their infraction is necessarily a suit or civil proceeding.<sup>10</sup> Precisely speaking, a proceeding taken for the enforcement of civil rights is a civil proceeding, even if the jurisdiction of the Court, which has been invoked, happens to be special or extraordinary.<sup>11</sup> The Constitution nowhere defines what 'civil proceedings' are and, therefore, the Court must examine the nature of the proceeding to find out whether it can be called a civil proceeding or not. If the proceeding is in aid of establishing a civil right or for disputing one it would be a civil proceeding. The test would be whether under the provisions of any statute the right claimed or denied could be established in a Civil Court. Broadly speaking, if the proceedings taken establish or negative a man's office or would affect his right to property of any kind it will be a civil proceeding.<sup>12</sup>

**7. Survival of cause of action.**—It is the settled law that a suit or proceeding necessarily abates if the cause of action does not survive to the surviving successor. The cause of action is something much wider in its scope than the mere date on which the cause of action arises. As is well known, the cause of action is the whole bundle of facts upon the basis of which the plaintiff alleges the infringement of a right and seeks a remedy. Where the defendant sets up the bar of Order XXII, Rule 9 of the Code of Civil Procedure (V of 1908), under the relevant provisions of the Indian Evidence Act, I of 1872, regarding the burden of proof, the onus lies upon the defendant for establishing the existence of the bar by showing that the cause of action is the same in both sets of suits.<sup>13</sup> All persons on whom the cause of action devolves can continue the suit or proceeding.<sup>14</sup> The substitution of successor should normally take place within 90 days of the predecessor's death or retirement in accordance with the provisions con-

9. *Guru Gobinda Basu v. Shankri Prasad Ghoshal and Others*, AIR 1963 Cal 364.

10. *Kehar Singh Nihal Singh v. Custodian General, Evacuee Property*, AIR 1959 Punj. 58.

11. *Ibid.*

12. *Guru Gobinda Buru v. Sankari Prasad Ghosal and Others*, AIR 1963 Cal 364.

13. *Babu v. Jagdei*, 1957 ALJ 230.

14. *Monga Devi v. Prahlad*, 1960 ALJ 61 (Rev.)



tained in Order XXII of the Code of Civil Procedure (V of 1908). The Court has, however, jurisdiction to extend the benefit of Section 5 of the Limitation Act if it is satisfied that there are sufficient grounds for doing so.<sup>15</sup> If the cause of action survives there is no reason why a suit or proceeding should not proceed against some only of the successors of a deceased person who is impleaded as defendant. The acid test for determining as to whether on the bringing on record of some only of the successors of a deceased defendant the suit abates or not is as to whether a separate suit would lie against them or not. If the persons brought on record as the successors do not represent a part of the deceased's estate a separate suit would lie against them.<sup>16</sup>

### 8. Enforcement of judgment against society.—

If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, movable, or immovable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

### SYNOPSIS

- |                         |                                                        |
|-------------------------|--------------------------------------------------------|
| 1. State Amendments.    | 4. Execution of judgment.                              |
| 2. English Law.         | 5. Tax imposed on society is not a tax on its members. |
| 3. Nominee's liability. |                                                        |

#### States Amendments

##### Bihar

In Section 8 of the principal Act, after the word "Judgment" wherever it occurs, the words "or decree" shall be inserted vide Bihar Act No. 2 of 1960.

##### Mysore

"Enforcement of judgment against society.—If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, movable or immovable, or against the body of such person or officer, but against the property.

15. *Punni Lal v. Nasuridin*, 1956 UPRD 68.

16. *Jagat Narain and Others v. Sita Ram*, AIR 1963 Him Pra 25.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.<sup>1</sup>

### Rajasthan

*"Enforcement of judgment against society.*—(1) If a judgment shall be recovered against a person or officer on behalf of the society, such judgment shall not be put in force against the property movable or immovable, or against the body of such person or officer but against the property of the society.

(2) The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only and shall require to have the judgment enforced against the property of the society."

**2. English Law—Officer as defendant.**—In legal proceedings brought under the Friendly Societies Acts by a member or person claiming through a member, a registered society or branch may also be sued in the name, as defendant, of any officer or person who receives contributions or issues policies on behalf of the society or branch within the jurisdiction of the Court in which the legal proceeding is brought, with the addition of the words "on behalf of the society or branch", naming the same.

An officer sued on behalf of the society is not personally liable.<sup>3</sup>

**3. Nominees' liability.**—The liability of a person nominated by a registered society for the purpose of suing and being sued on behalf of the society is limited to the property of the society. A judgment recovered against such a person who has acted on behalf of a society is enforceable against the property of the society and not against the property in which such a person has a personal interest.<sup>4</sup> The word "interest" has a very wide import and should be construed very liberally so that any right which a person may have over a property may not escape from consideration.<sup>5</sup>

**4. Execution of judgment.**—A judgment recovered against the society may be put on execution by any application setting forth the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only but such judgment shall be executed only against the property of the society. The personal property of the person or officer nominated by the society to sue and to be sued cannot be attached in the execution of a decree

1. Section 9 of Mysore Act No. III of 1904.

2. Section 8 of Rajasthan Act No. XXVIII of 1958.

3. Halsbury's Laws of England, 3rd Edn., Vol. 18, p. 114.

4. Halsbury (IIInd. Ed.) Vol. 21, Part II.

5. *Radha Raman Chowdhary v. Gulab Thakur and Others*, AIR 1959 Pat 50.

passed against the society. In the case of such attachment such a person or officer may put his claim by means of an objection as contemplated by Order XXI, Rule 58 of the Code of Civil Procedure (V of 1908), and if such objection fails or has not been brought, a regular suit for setting aside the attachment or sale and recovering the property is maintainable under Order XXI, Rule 63. So long as the property does not vest in the auction purchaser, which does not take place till the sale is confirmed by the executing Court, the executing Court has jurisdiction to entertain a claim and make an investigation under Order XXI, Rule 58, despite the fact that execution sale has taken place. The Court may, however, dismiss the claim or objection summarily on the ground that it is filed belatedly.<sup>6</sup>

Since a society is not a firm, the liability of the members of a society and the liability of the partners of a firm differ from each other. The members of a society are not personally liable and a decree against the society can be executed only against the property of the society and not against the personal property of its members. In the case of a firm a decree against it can be executed against the property of the firm and also against any person who has appeared in the suit individually in his own name and has been served with a notice under Rule 3 or 7 of Order XXX of the C. P. C. and again, also against a person who has been adjudged or admitted as a partner of the firm and who has been served with a notice individually but has failed to appear.<sup>7</sup>

It may be noted that in the execution proceedings where a liability is disputed by the garnishee such issue is to be determined by the executing Court and the decree-holder cannot be directed to file a separate suit to get the point raised by the garnishee decided.<sup>8</sup>

**5. Tax imposed on society is not a tax on its members**—This Act having negated any personal liability on the part of the members even in the case of a judgment recovered against the Society, it is difficult to visualise that the Indian Income-tax Act purports to override these statutory provisions. There is no specific provision in the Indian Income-tax Act to that effect.

The Society is a legal entity. It is capable of suing and being sued as such. A tax imposed on a Society, though it has been styled as an 'Association of persons' is still a tax on the Society and not on its members. It is not possible, therefore, to say that

6. *Chhoga Lal v. Khetmal and Another*, AIR 1963 Raj 144.

7. *Topanmal v. Kundomal Ganga Ram*, AIR 1960 SC 388.

8. *Sushila Devi v. Madan Mohan*, AIR 1960 All 547.



the tax imposed on a Society is a tax imposed on the members of the Society.<sup>9</sup>

**9. Recovery of penalty accruing under bye-law**—Whenever by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules do not provide for the making of bye-laws, by any bye-law made at a general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three-fifths of the members present at such meeting shall be necessary), any pecuniary penalty is imposed for the breach of any rule or bye-law of the society, such penalty, when accrued, may be recovered in any court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

### SYNOPSIS

- |                                    |                           |
|------------------------------------|---------------------------|
| 1. Modified law in certain States. | 3. Bye-laws.              |
| 2. English law.                    | 4. Jurisdiction of court. |

**1. Modified law in certain States**—In the following States modified provisions have been made in their respective State Acts which are given below :

#### Andhra Pradesh

*"Recovery of penalty and arrears of subscription*—If the rules of the society provide, or if it is resolved by a majority of votes of two-thirds of the members present at its general meeting, that a member shall have to pay a specific pecuniary penalty for the breach of any rule of the society, a suit may be instituted in a civil court for the recovery of such penalty when accrued and for the arrears of subscription."<sup>1</sup>

#### Mysore

*"Recovery of penalty accruing under bye-law*—Whenever by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules do not provide for the making of bye-laws, by any bye-law made at a general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three-fifths of the members present at such meeting shall be necessary), any pecuniary penalty is imposed for the breach of any rule or bye-law of the society, such penalty, when accrued, may be recovered in any court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient."<sup>2</sup>

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9. *Satchitand v. 2nd. Additional I. T. Officer*, AIR 1964 Ker 118 at 119.  
 1. Section 8 of AP Act No. 1 of 1950 F.  
 2. Section 10 of Mysore Act No. 111 of 1904.

**Rajasthan**

*"Recovery of penalty accruing under bye-law—Whenever, by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules or regulations do not provide for the making of bye-laws by any bye-law made at a general meeting of the members of the society convened for the purpose by a majority of not less than three-fifths of the members of the society actually present at such meeting any pecuniary penalty is imposed for the breach of any rule, regulation or bye-law of the society, such penalty, when accrued, may be recovered in any court having jurisdiction in the place where the defendant shall reside or the society shall be situate, as the governing body of the society shall deem expedient."*<sup>3</sup>

**2. English Law—Proceedings by or against registered societies**—The Trustees of a registered society or branch, or officers authorised by its Rules, may bring or defend actions or legal proceedings with respect to any property, right, or claim of the society or branch, and may sue and be sued in their proper names without other description than the title of their office. The liability of Trustees to be sued in proceedings with respect to a right or claim of society or branch is restricted to cases in which the right or claim concerns the property of a society or branch, and does not therefore extend to all cases where the funds of the society or branch are threatened by a claim for damages. In proceedings concerning property vested in the Trustees of a registered society or branch the property may be stated to be the property of the Trustees in their proper names as Trustees for the society or branch without further description.

A registered society, if sued in the society's name, may appear either in that name, with the addition of the words "registered under the Friendly Societies Act, 1896," or by the Trustees or other officers appointed to sue or be sued on its behalf.

The Attorney-General is not a necessary party where the proceedings concern a non-charitable friendly society.

Proceeding may be brought against a Trustee of a society or branch by the other Trustee or Trustees <sup>4</sup>

**3. Bye-Laws**—The society is empowered to frame bye-laws for imposing penalty for breach of any rule or bye-law made by it in accordance with its rules and regulations. However, no special legal force is attached to rules made by the society merely because of the fact that the rules have been filed with the registering authority at the time of registration. A bye-law made by the society before registration - which is inconsistent with the Act ceases to be operative as soon as the society is registered.<sup>5</sup> Again,

3. Section 9 of Rajasthan Act No. XXVIII of 1958.

4. Halsbury's Laws of England, 3rd Edn., Vol. 18, pp. 113, 114.

5. *Radha Swami Satsang Sabha v. Tara Chand*, 1939 ALJ 757; 184 IC 293.

the bye-law made by the society for imposing penalty must be framed in accordance with the rules made according to the Act and not otherwise. If a bye-law has not been framed as such the penalty imposed by the society in accordance with it cannot be recoverable in Court.<sup>6</sup>

**4. Jurisdiction of Court**—Under the Act an action for recovery of penalty imposed by a society is maintainable in a Court under whose jurisdiction the defendant resides or the society is situate. The objection as to jurisdiction must be made in the Court of first instance at the earliest possible opportunity.

- Section 21 of the Civil Procedure Code, V of 1908, provides that “no objection as to the place of suing shall be allowed by any appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice”. It has been held in large number of cases that objections as to jurisdiction can be raised at any stage even for the first time.<sup>7</sup>

Where one of the parties to a contract signs an order form printed by the other party containing the words “subject to Madras jurisdiction” and sends the order form to the other party, it must be assumed that that party agreed that ‘Madras’ is the place for the settlement of dispute. It is not open to that party to question the jurisdiction of Madras Court.<sup>8</sup>

The conflict of jurisdiction between the Civil Court and the Revenue Court has to be determined on the basis of the allegations in the plaint and the reliefs claimed therein.<sup>9</sup>

**10. Members liable to be sued as strangers**—Any member who may be in arrear of a subscription which, according to the rules of the society he is bound to pay, or who shall possess himself of or detain any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such detention, injury, or destruction of property in the manner hereinbefore provided :

**Recovery by successful defendant of costs adjudged**—But if the defendant shall be successful in

6. *Zardozi Union Lucknow v. Bashir Khan*, AIR 1925 Oudh 107 : 80 IC 556.

7. *Babu v. Jagdei*, 1957 AWR (Rev.) 217 : ALJ 230 (Rev.) : UPRD 286.

8. *S. Manuel Raj & Co. v. J. Manilal & Co.*, AIR 1963 Guj 148.

9. *D. K. Tiwari v. R. S. Tiwari*, 1960 ALJ 479.



any suit or other proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society, and in the latter case shall have process against the property of the said society in the manner above described.

### SYNOPSIS

- |                                    |                                             |
|------------------------------------|---------------------------------------------|
| 1. Modified law in certain states. | 4. Arrears.                                 |
| 2. English Law.                    | 5. Liability of defaulting member analysed. |
| 3. General.                        |                                             |

**1. Modified law in certain States**—In the following States modified provisions have been made in their respective State Acts which are given as under :

#### Mysore

*"Members liable to be sued as strangers*—Any member who may be in arrear of a subscription which, according to the rules of the society, he is bound to pay, or who shall possess himself of or detain any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such detention, injury or destruction of the property in the manner hereinafter provided.

*"Recovery by successful defendant of costs adjudged*—But if the defendant shall be successful in any suit or other proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society; and in the latter case shall have process against the property of the said society in the manner above described."<sup>1</sup>

#### Rajasthan

*"Members liable to be sued as strangers*—(1) Any member of a society registered under this Act, who may be in arrear of a subscription which, according to the rules and regulations of the society, he is bound to pay or who shall possess himself of or detain any property of the society in a manner or for a time contrary to such rules and regulations or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such possession, detention, injury or destruction of the property in the manner hereinbefore provided.

(2) If in any suit or proceeding brought under sub-section (1) at the instance of the society the defendant shall be successful and shall be adjudged to recover his costs he may elect to proceed to recover the same from the officer in whose name the suit or other proceeding shall be brought or from the society, and in the latter case, shall have process against the property of the society in the manner above described."<sup>2</sup>

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1. Section 11 of Mysore Act No. III of 1904.
  2. Section 10 of Rajasthan Act No. XXVIII of 1958.

**2. English Law—Liability of members**—Registered societies and branches other than cattle insurance societies, and certain specially authorised societies, cannot sue a member for arrears or current subscriptions. Sums of money payable by a member to a registered cattle insurance society or branch or to such specially authorised societies or branches as the Treasury may allow are debts, and recoverable as such in the County Court of the district in which the member resides.

The Rules must provide for the consequences of non-payment of any subscription or fine, but such a rule cannot give the society power to sue. Fines imposed by Rules may be recovered in a court of summary jurisdiction. They must be reasonable or they cannot be enforced.

Where the funds of a society have been improperly divided among members, the members may be ordered to refund the amount received by them.

A registered society or branch is not a corporate body, and the Friendly Societies Acts make no provision limiting the liability of members in respect of its debts. It is conceived that members are not liable to contribute to the funds more than the subscriptions prescribed by the Rules and that in respect of contracts entered into on behalf of societies or branches the general law of agency applies.<sup>3</sup>

**3. General**—In regard to an injury done to a corporate body, a suit could be brought only as representing the society and not by an individual member in his individual capacity. But proceedings could be instituted for the vindication or establishment of the rights of an individual, in which case, the company or the President and members and other share-holders or directors who declined to join in the suit should be impleaded as parties thereto.

The position of the members of a registered society is similar to that of share-holders of a company and in regard to the wrong complained of, in respect of the society, redress could be sought only on behalf of the society.<sup>4</sup>

If there is an article providing for the mode in which a suit has to be brought on behalf of the Company, that should be conformed to, and it is not open to a member to vary the procedure indicated therein unilaterally.

3. Halsbury's Laws of England, 3rd Edn., Vol. 18, p. 60.

4. *Krishnan v. Sundaram*, ILR 1941 Bom 497: AIR 1941 Bom 312.

It is not open to a member of the society to lay an action as representing the society. It is only an accredited representative of the society that can bring an action in its name.<sup>5</sup>

4. **Arrear**—The term 'arrear' means money not paid on due date and falls due against a person. The existence of some default on the part of the person liable for payment is an essential characteristic of 'arrears' and it must be taken into account.<sup>6</sup> The arrears, even if decreed, do not cease to be arrears.<sup>7</sup> The term 'arrears' may also include time-barred dues.<sup>8</sup>

5. **Liability of defaulting member analysed**—A person who is in arrear of a subscription which according to the rules of the society, he is bound to pay, or has possessed, detained, injured or destroyed any property of the society contrary to such rules, is said to be a defaulting member. He may be sued for recovery of money due against him as an arrear of subscription of the society or for his tortious acts resulting in the damage to the property of the society as a stranger. If, however, the action against him fails and he is adjudged for his costs, he may either proceed against the officer in whose name the proceedings were taken or against the property of the society for recovering his costs. The officer in whose name the proceedings are taken on behalf of the society is deemed to be an agent of the society. The term 'agent' has been defined under Section 182 of the Indian Contract Act, 1872: "An agent is a person employed to do any act for another or to represent in dealings with third persons". The authority of an agent may be expressed when it is given by words spoken or written, and it is said to be implied when it is to be inferred from the circumstances of the case, and things spoken or written or the ordinary course of dealing, may be accounted circumstances of the case.<sup>9</sup> The relationship between a principal and an agent necessarily implies privity and in its absence no such relationship exists.<sup>10</sup> It is the well-settled law that the principal is liable for the tortious acts committed by his agent on the principle of vicarious liability.<sup>11</sup> The present section of the Societies Registration Act recognizes the principle of vicarious liability and allows the person who is adjudged for his costs in litigation, to proceed against the property of the society notwithstanding that the litigation took place in the name of any of its officers.

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5. *Neelakanteswara Rao v. Raghavendra Rao MHS Committee*, AIR 1963 AP 20 at pp. 22, 23.
  6. *Kripa Sindhu Mukerjee v. Anandu Sunderi Dso*, 6 CLJ 273: 11 CWN 983.
  7. *J. S. Peters v. Ram Narain*, 1949 AWR 27: AIR 1949 All 537.
  8. *Vamana v. Venkatu*, AIR 1936 Mad 116.
  9. See Sections 186 and 187 of the Indian Contract Act, 1872.
  10. *S. Ripudaman v. Surinder Kumar and Others*, AIR 1959 Punj 92.
  11. *Baries v. Wooley*, (1954) 1 All LR 909(HL).



**11. Members guilty of offences punishable as strangers**—Any member of the society who shall steal, purloin, or embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner, as any person not a member would be subject and liable to in respect of the like offence.

### SYNOPSIS

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|------------------------------------|-----------------|
| 1. Modified law in certain States. | 4. Maliciously. |
| 2. English Law.                    | 5. Prosecution. |
| 3. Wilfully.                       |                 |

**1. Modified law in certain States.**—In the following States modified provisions have been made in their State Acts which are given below :

#### Mysore

*"Members guilty of offences punishable as strangers.*—Any member of a society who shall steal, purloin or embezzle any money or other property or wilfully and maliciously destroy and injure any property of such society, or shall forge any deed, bond, security for money, receipt or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner, as any person not a member would be subject and liable to in respect of the like offence.<sup>1</sup>

#### Rajasthan

*"Members guilty of offences punishable as strangers.*—Any member of a society registered under this Act, who shall steal, purloin or embezzle any money or other property or wilfully and maliciously destroy or injure any property of such society or shall forge any deed, bond, security for money, receipt or other instrument whereby the funds of the society may be exposed to loss shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner, as any person not a member of the society would be subject and liable to in respect of the like offence."<sup>2</sup>

**2. English Law—Failure to observe statutory requirements.**—It is an offence under the Friendly Societies Act, 1896, if a registered society or branch, or an officer or member (1) fails to give any notice, sends any return or document, does or allows to

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1. Section 12 of Mysore Act No. III of 1904.
  2. Section 11 of Rajasthan Act No. XXVIII of 1958.

be done anything required by the Act to be given, sent, done or allowed to be done; (2) wilfully neglects or refuses to do any act or furnishes any information required for the purposes of the Act by the Chief or other Registrar or any other authorised person, or does anything forbidden by the Act; or (3) makes a return or wilfully furnishes information in any respect false or insufficient.

It is also an offence if an officer or member of a body which, having been a branch of a society, has wholly seceded or been expelled from that society thereafter uses the society's name, or any other name implying that the body is still a branch of the society, or the number by which that body was designated as a branch.

Where a dispute is referred to the Chief Registrar, it is also an offence if a person refuses to attend or produce any documents or to give evidence before him.

All these offences are summary offences, and the maximum fine is £ 5.

An offence is also committed under the Friendly Societies Act, 1896 if a society fails to comply with a claim by the owner of an endowment policy falling within certain categories for a free paid-up policy or payment of the surrender value; if a registered society (not being a collecting society) or branch contravenes or fails to comply with any of the provisions of the Industrial Assurance and Friendly Societies Act, 1948, or of a direction, for the auditing of accounts by an approved Auditor given under that Act; or if a registered society (not being a collecting society) or branch contravenes or fails to comply with the regulations relating to the reinstatement of life policies in the case of persons serving in the reserve or auxiliary forces.

**Liability of officers and committee men**—If any registered society or branch is guilty of an offence under the Friendly Societies Act, 1896, every officer of the society or branch bound by the Rules thereof to fulfil any duty whereof the offence is a breach, or, if there is no such officer, then every member of the Committee, unless that member is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is liable to the same penalty as if he had committed the offence.<sup>3</sup>

**3. Wilfully**—‘Wilfully’ means ‘intentionally or deliberately.’<sup>4</sup> Generally the word ‘wilful’, as used in Courts of law, implies nothing blamable, but merely that the person of whose action or default the expression is used is a free agent, and that

3. Halsbury's Laws of England, 3rd Edn., Vol. 18, pp. 107, 108, 109.

4. Bryne's Law Dictionary.

what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows, what he is doing, and intends to do what he is doing and is a free agent. A default or negligence will be considered as wilful, when under ordinary circumstances the person making the default or committing negligence would have refrained from making or committing the same.<sup>5</sup> Their Lordships of the Privy Council have held that the expression 'wilfully' means that the act is done deliberately and intentionally and not by accident or inadvertence, but so, that the mind of the person who does the act goes with it.<sup>6</sup> The word 'wilful' has been used in Section 3 of the Transfer of Property Act in connection with the definition of notice. The words "wilful abstention from inquiry or search" were taken to mean such abstention from inquiry or search as would show want of *bona fides*.<sup>7</sup> It has been held that the word 'wilful' made it clear that the abstention from inquiry should be designed and due to a desire to avoid an inquiry which would lead to ultimate knowledge.<sup>8</sup> Where the offence is intended to be dependent upon a blameworthy mind in the form of the knowledge of the facts constituting the offence, the word 'wilfully' is used to denote this requirement. It denotes the necessity for proving that the accused had a guilty mind.<sup>9</sup> The intention of a person can only be gathered from his acts as every person is presumed to intend the natural consequences of his acts.<sup>10</sup>

**4. Maliciously**—'Maliciously' implies an act or omission actuated by some improper motive or purpose. It is not correct to say that evidence of absence of reasonable and probable cause is evidence of malice. A man may do an act or abstain from doing an act by malice and yet he may have reasonable and probable cause for the same.<sup>11</sup> The nature of malice varies in law with the proceeding in which it is in question. It has generally to be inferred from the previous and subsequent conduct of the parties, or the terms upon which they lived.<sup>12</sup>

**5. Prosecution**—The present section of the Act lays down the law that members of a registered society are liable to be prosecuted and punished as strangers. A member of such a society may be prosecuted for theft, embezzlement of any money or other

5. A Manual of Law Terms and Phrases by Aiyer, (1927 Ed.).

6. *Ardeshir Bicaji Tamboli v. Agent G. I. P. Rly. Co.*, AIR 1928 PC 24.

7. *Joshua v. Alliance Bank of Simla*, ILR 22 Cal 185.

8. *Kansali v. Sankaramuthu*, AIR 1941 Mad 707.

9. *In re Arcot Citizens Bom. Ltd.*, 1957 Cr LJ 1279.

10. *Ghasi v. State*, AIR 1952 Bhopal 25.

11. *Nagendra Kumar v. Etwari*, AIR 1958 Pat 329.

12. Phipson, Ev. 8th Ed. p. 151.



property of the society, or for wilful and malicious destruction or injury to the property of the society, or for forging any deed, bond, security for money, receipt or other instrument belonging to the society whereby the funds of the society may be exposed to loss. The prosecution of such an accused member shall be proceeded with in accordance with the ordinary criminal law of the land, and, if convicted, shall be punished in the like manner as a stranger found guilty of the like offence. The prosecution holds the *prima facie* duty of proving the guilt of the accused and the onus cannot be shifted to the accused to prove his innocence.<sup>13</sup> Unless otherwise directed by the statute, the presumption of innocence casts upon the prosecution the burden of proving every ingredient of the offence.<sup>14</sup> Witnesses essential to the unfolding of the narrative, on which the prosecution is based, must be called by the prosecution, whether in the result the effect of their testimony is for or against the case of the prosecution.<sup>15</sup> It is the place of commission of the offence which decides the jurisdiction of prosecuting Court, and hence the Court must satisfy itself on the point of jurisdiction before proceeding with the prosecution.<sup>16</sup>

## Section 11-A

### State Amendments

**Maharashtra**—A new Section 11-A has been added to the principal Act, vide Maharashtra Act XI of 1968, as under :

“11-A. *Penalty for contravening Section 4-A.*—If the governing body entrusted with the management of the affairs of society registered under this Act required to furnish any information or return :

- (i) wilfully refuses or without lawful excuse neglects to furnish such information or return as may be required under Section 4-A; or
- (ii) wilfully furnishes or causes to be furnished any information or return which it knows, to be false; or
- (iii) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under Section 4-A,

such governing body, shall for each such officer, on conviction, be punished with fine which may extend to fifty rupees. [Maharashtra Act No. 11 of 1968].

13. *Prabhoo v. E.*, ILR 1941 All 843 : 197 IC 525.

14. *Bindra v. E.*, 35 Cr LJ 1489 : 192 IC 85.

15. *Sunil Chandra Roy v. State*, AIR 1954 Cal 305.

16. *M. H. Alexander and Another v. Smt. Claira Alexandra*, AIR 1959 All 67.

## Section 11-B

### State Amendments

**Maharashtra**—A new Section 11-B has been *added* to the principal Act, *vide* Maharashtra Act XI of 1968, as under :

“11-B. *Penalty for improper disclosure of information or return.*—If the Registrar or any person duly authorised by him in connection with the collection of any information or returns under this Act wilfully discloses any information or the contents of any return given or made under this Act otherwise than in the execution of his duties under this Act or for the purposes of the prosecution, of an offence under this Act or the Indian Penal Code (XLV of 1860) he shall on conviction, be punished for such offence with fine which may extend to two hundred rupees.”

## Section 11-C

### State Amendments

**Maharashtra**—A new Section 11-C has been *added* to the principal Act, *vide* Maharashtra Act, XI of 1968, as under :

“11-C. *Cognisance of offences*—No prosecution for an offence under Section 11-A shall be instituted, except by or with the sanction of the Registrar, and no prosecution for an offence under Section 11-B shall be instituted except by or with the consent of the State Government.”

**12. Societies enabled to alter, extend or abridge their purposes**—Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society ;

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy,

and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

### SYNOPSIS

- |                                           |                                                                                   |
|-------------------------------------------|-----------------------------------------------------------------------------------|
| 1. State amendments.                      | 6. Question of an amendment or change in the constitution or the rules explained. |
| 2. Modified law in certain States.        | 7. Procedure analysed.                                                            |
| 3. English Law.                           | 8. Effect of change of name.                                                      |
| 4. Provisions whether mandatory.          |                                                                                   |
| 5. Purpose and object whether synonymous. |                                                                                   |

**1. State Amendments.**—The amendments made by amending Acts in certain States are given below :

#### Gujarat

Same as that of Maharashtra.

**Orissa.**—The following amendment has been made by the Orissa Act No. 8 of 1969 :

In Section 12 of the principal Act :

- (a) in the first paragraph after the words “any other society” the words “or whenever the governing body of any such society decides to change the name of the society” shall be *inserted*;

#### Maharashtra

“In Section 12 of the Societies Registration Act, 1860 (XXI of 1860), after the words ‘other society’ the words ‘or whenever the governing body of any society registered under this Act decides to change the name of the society’ shall be *inserted*.”<sup>1</sup>

*“Pending proceedings and construction of references to Registrar of Companies instruments issued or made before this Act.*—(1) All proceedings under the said Act pending before the Registrar of Companies at the date of commencement of this Act shall stand transferred to the Registrar of Societies and any such proceeding shall be continued and disposed of by the Registrar or by such Assistant Registrar of Societies as the Registrar of Societies may direct, as if it had been originally instituted before such Registrar or Assistant Registrar, as the case may be, under the said Act.

(2) In all certificates of registration and in all rules or bye-laws of societies and in all other instruments issued or made under the said Act before the commencement of this Act, references to the Registrar of Joint Stock Companies or the Registrar of Companies shall be deemed to be and be construed as references to the Registrar of Societies.”<sup>2</sup>

- (b) after the second paragraph the following proviso shall be *inserted*, namely :

“Provided that no proposition for amalgamation shall be carried

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1. Section 2 of Bombay Act No. LIII of 1948.

2. Section 5 of Bombay Act No. XI of 1956.



into effect unless it has been considered, agreed to and confirmed by all the concerned societies in the manner prescribed in this section.”<sup>3</sup>

### **Punjab : Haryana : Chandigarh**

“*Amendment of Section 12 of Act XXI of 1860.*—In Section 12 of the said Act, after the words ‘other society’ the words ‘or whenever the governing body of any society registered under this Act decides to change the name of the society’ shall be inserted.”<sup>4</sup>

### **Union Territory of Delhi and State of Himachal Pradesh**

“*Amendment of Sections 4, 12-A, 12-C and 18 of Act No. XXI of 1860.*—In Sections 4, 12-A, 12-C and 18 of the principal Act the words “of Joint Stock Companies” shall be omitted.”<sup>5</sup>

### **West Bengal**

“*Amendment of Section 12 of Act XXI of 1860.*—In Section 12 of the said Act, after the words “other society” the words “or whenever the governing body of any society registered under this Act decides to change the name of the society” shall be inserted.”<sup>6</sup>

**2. Modified law in certain States.**—In the following States modified provisions have been made in their respective State Acts which are given as under:

### **Andhra Pradesh**

“*12. Amendment, alteration, etc., in the purposes of society.*—(1) No alteration, amendment or extension shall be made in the purposes of the society, nor shall it be amalgamated with another society, unless it is voted by two-thirds of the members present at a special meeting convened for this purpose in accordance with the rules of the society and confirmed by two-thirds of the members present at a second special meeting:

Provided that a notice to hold such meeting shall be delivered or sent by post to every member at least ten days in advance.

(2) The alteration, amendment or extension made or amalgamation affected under sub-section (1), shall be reported to the Registrar of Joint Stock Companies.”<sup>7</sup>

### **Mysore**

“*12. Societies enabled to alter, extend or abridge their purposes.*—Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society; but no such proposition shall be carried into effect unless such report

3. Vide Orissa Act No. 8 of 1969.

4. Section 3 of Punjab Act No. VI of 1949.

5. The Societies Registration (Punjab Amendment) Act XXXI of 1957 as modified and extended to the Union territories of Delhi and Himachal Pradesh.

6. Section 3 of West Bengal Act No. XVI of 1950.

7. Section 9 of AP Act No. 1 of 1950 F.

shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.”<sup>8</sup>

### Rajasthan

“12. *Societies enabled to alter, extend or abridge purposes or to amalgamate*—(1) Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend or abridge such purpose or purposes to or for\* other purpose or purposes within the meaning of this Act or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report and may convene a special general meeting for the consideration thereof according to the rules and regulations of the society.

(2) No such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special general meeting convened by the governing body for the consideration thereof nor unless such proposition shall have been agreed to by the votes of two-thirds of the members delivered in person or by proxy and confirmed by the votes of two-thirds of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.”<sup>9</sup>

**3. English Law**—The contract between the members and a registered friendly society or branch is contained in its Rules. If the Rules are the only form of contract between a member and a registered society or branch, and there is power to amend them, a member is bound by any such amendment, within that power, whatever the extent of the amendment may be and without any express assent or concurrence on the part of a particular member. A member cannot be deprived of payment of a benefit due and payable to him under the Rules as they existed before the amendment becomes effective, but the amendment can affect any benefit which may become due or payable thereafter. If there is a secondary contract, such as a policy certificate of membership, the member's assent would be necessary to an amendment of Rules affecting that contract, unless it is expressly stated to be made subject to an amendment of Rules. The society's power to amend its Rules does not prevent a contract to pay death benefits which is contained in those Rules from being a contract of assurance.

**Mode and effect of changing name**—A registered society may change its name by special resolution, with the written

8. Section 13 of Mysore Act No. III of 1904.

9. Section 12 of Rajasthan Act No. XXVIII of 1958.

approval of the Chief Registrar, and not otherwise. The choice of a new name is subject to the same restrictions regarding identity or similarity with the names of subsisting societies as the choice of a name on the formation of a new society. Since the approval of a change should be given, such as a change in the constitution or circumstances of the society.

An application for approval of change of name and registration of the special resolution must be accompanied by a statutory declaration by an officer of the society that the statutory provisions with respect to special resolutions have been complied with.

The change of name does not affect any right or obligation of the society or of any member, and any pending legal proceedings may be continued by or against the Trustees of the society or any other officer who may sue or be sued on behalf of the society, notwithstanding the change.

**Power of Chief Registrar to call special meeting**—The Chief Registrar may, with the consent of the Treasury, call a special meeting on the application of one-fifth of the members of a registered society; in the case of a society with branches, with the consent of the central body, or of 100 if there are from 1,000 to 10,000 members, or of 500 where there are more than 10,000 members.

The application must be supported by such evidence, showing good reason for the meeting and absence of malicious motives in the applicants, as the Chief Registrar directs. Notice of the application must also, in accordance with his direction, be given to the society; and he may require the applicants to give security for the cost of the proposed meeting.

The expenses in connection with or preliminary to the special meeting are payable at the discretion of the Chief Registrar by the applicants, or out of the society's funds, or by members or officers or former members or officers. They may be recovered in a Magistrate's Court as a civil debt.

The Chief Registrar may determine the time and place of the meeting and the matters to be discussed, and the meeting has all the powers of a meeting called under the Rules, and may appoint its own Chairman. The Chairman of the special meeting sends a report of what takes place of the Chief Registrar.

**Purposes of special resolutions**—For certain transactions a registered society has to pass a special resolution as defined in the Friendly Societies Act, 1896. These are change of registered name, amalgamation with another registered society or a company, transfer of engagements to another registered society or company,



and conversion of a registered society into a company. Such special resolutions are only passed by registered societies, not branches.

For those purposes a special resolution is a resolution which is (1) passed by a majority of not less than three-fourths of such members of a registered society entitled under the Rules to vote, as may be present in person or by proxy (where the Rules allow proxies), at any general meeting of which notice specifying the intention to propose that resolution has duly been given according to the Rules, and (2) confirmed by a majority of such members for the time being entitled under the Rules to vote in person or by proxy at a subsequent general meeting, of which notice has duly been given, held not less than fourteen days, nor more than one month, from the day of the meeting at which such resolution was first passed. At any such meeting a declaration by the Chairman that the resolution has been carried is conclusive evidence of the fact.

**Registration**—A copy of every special resolution, signed by the Chairman of the meeting and countersigned by the Secretary, must be sent to the central office and registered, and until the copy is registered the special resolution is ineffective.<sup>10</sup>

4. **Provisions whether mandatory.**—Though the word 'shall' occurring in Section 12 is not conclusive of the section being mandatory, it is highly suggestive of its being so.

Section 13 of the Act provides that the concurrence of three-fifths of its members is required for the dissolution of a society registered under the Act and if the Government happened to be a member of the society, its consent has also got to be obtained. Section 14 provides that in case of dissolution of the society its funds are not to be distributed between its members but are to be given to some other society to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or, in default thereof, by a Court. These provisions indicate that once a society is formed it should continue and neither its dissolution nor the change of its purposes can be lightly made. Section 17 of the Act provides that even in case of societies which were established before the Act came into force assent of three-fifths of its members has got to be given for purpose of its being registered under the Act. This would show that there is an insistence on the part of the Legislature on a majority of three-fifths in respect of all fundamental changes with regard to a society. The provisions have been framed for public benefit and it is obvious that their contravention

10. Halsbury's Laws of England, 3rd. Edn. Vol. 18, pp. 40, 41, 63, 64.

is likely to endanger public interest. For these reasons the provisions of Section 12 of the Act are mandatory and not merely directory.<sup>11</sup>

**5. Purpose and object whether synonymous**—There is no difference between 'purposes' and 'objects' in the Act. This is made clear by the provisions of Sections 2 and 18 of the Act. Section 2 provides that the Memorandum of Association shall contain the following things, that is to say—the name of the society; the objects of the society; the names address and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted. It is obvious that the words 'objects of the society' have been used here in the sense of 'purpose'. Section 18 provides that if any society which was established before the Act came into existence wants to get registered it must file with the Registrar of Joint Stock Companies a Memorandum showing the name of the society, the object of the society and the names, addresses and occupations of the governing body together with a copy of the rules and regulations of the society certified as provided in Section 2, and a copy of the report of the proceedings of the general meeting at which the registration was resolved on. The word used in Section 18 is not 'purpose' but 'object'. Section 1 does not speak of object but of purpose. It is however obvious that the two words describe the same thing. Therefore, the word 'purpose' or 'object' in the Act has been used synonymously.<sup>12</sup>

**6. Question of an amendment or change in the constitution or the rules explained**—In *Corpus Juris Secundum*, Vol. 14, the question of the amendment or change in the constitution or the rules has been summarised in the following words on pages 1282 and 1283:

"If a club adopts a constitution and bye-laws, they constitute a contract between the club and its members, binding on both, whether the club is incorporated or not ..... A bye-law of a club can be adopted only on compliance with the provisions, if any, in the bye-laws therefor, and key-laws, which are permanent and continuing rules of Government, can be amended or repealed only in the manner prescribed by the bye-laws."

The law as stated in *Corpus Juris Secundum* is also applicable to societies registered in India.<sup>13</sup>

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11. *Ram Charan v. Shridhar*, AIR 1962 All 610 at 613, 614, reversing AIR 1959 All 598.
  12. *Ram Charan v. Shridhar*, AIR 1962 All 610 at p. 614, reversing AIR 1959 All 598.
  13. *Rin Charan v. Shridhar*, AIR 1962 All 610 at p. 617



**7. Procedure for amendment or change of purpose—**

The procedure laid down by Section 12 of the Societies Registration Act for alteration, extension, or abridgement of the purposes of the society contemplates the following steps which must be taken for the purpose :

- (i) Submission of the proposal by the governing body to members of the society in writing or printed report ;
- (ii) Ten days' notice to members for holding a special general meeting ;
- (iii) Consideration of proposal by the special general meeting convened for the purpose ;
- (iv) Resolution of the special general meeting adopting the proposal by three-fifths majority of the members of the society ;
- (v) Confirmation of the resolution passed by the special general meeting in another special general meeting to be convened by the governing body at an interval of one month after the former meeting.

A perusal of the section and the relevant amended and modified law enacted in Acts of various States clearly shows that it is the intention of the Legislature to put restriction upon the majority to alter the fundamental principles upon which the society is founded.<sup>14</sup> A resolution passed by a majority of the members of a society to transfer the property of the society held in trust to be used for a particular purpose to other person or body for the use of a different purpose was held as invalid.<sup>15</sup> Where a decree has been passed, a resolution passed by the majority of the society to increase the strength of the managing committee which was fixed in the prior scheme decree has been held as inoperative.<sup>16</sup> However, if the matter is related merely to the internal management without, in any way, affecting the fundamental basis on which the society was started, the majority decision would bind the society.<sup>17</sup> Where society was formed for the purpose of spreading education it could hardly justify the erection of a building to be used as a hospital unless it wanted to provide for medical education as well. *Held* that it could not be contended that because a society registered under the Societies Registration Act can change its objects at any moment even without making an application to Court for the

14. *Parasanna Venkatesa Rao v. K. Srinivasa*, 59 MLJ 770 : 129 IC 235.

15. *Attorney General v. Anderson*, (1888) 57 IL Ch 543 : 58 LT 726.

16. *Taluk High School Committee Tenali v. Suraya Narain Rao*, (1958) 1 Andhra WR 244.

17. *Parasanna Venkatesa Rao v. K. Srinivasa*, 59 MLJ 770 : 129 IC 235.



purpose hence its powers should not be scanned too strictly. No doubt Section 12 of the Societies Registration Act provides that the governing body of any such society could extend or abridge or alter its purposes by merely submitting the proposition to its members and by convening a special meeting for the consideration thereof according to the Rules of the society and it would be enough if three-fifths of the members sanctioned such alterations. However that may be so long as the purposes of the society are not altered it cannot lawfully do something not sanctioned by its objects.<sup>18</sup>

**8. Effect of change of name**—If the name of a society is changed, an altered certificate of registration must be obtained by the society from the registering authority in accordance with the procedure laid down for the purpose. The change of name will take effect from the date of recording the change by the registering authority. However, legal proceedings pending or to be instituted by or against the society will not be affected in any way by the change of name of the society.

## Section 12-A

### States Amendments

**Assam**—A new Section 12-A has been *added* to the principal Act, *vide* Assam Act No. 14 of 1948, as under :

*"12-A. Change of name.*—Any society registered under this Act may, with the consent of not less than two-thirds of the total number of its members, by a resolution at a general meeting convened for the purpose and subject to the provisions of Section 12-B change its name".

**Bihar**—A new Section 12-A has been *added* to the principal Act, *vide* Bihar Act No. 30 of 1948, as under :

*"12-A. Change of name.*—Any number not less than three-fifths of the members of any society registered under Section 3 may, subject to the provisions of Section 12-B, change its name."

**Gujarat**—Same as that of Maharashtra except sub-section (4) of Section 12-A, Sections 12-D and 12-E. —Bom. Act LXXVI of 1958 and Act XI of 1960, Section 83.

**Maharashtra**—A new Section 12-A has been *added* by Maharashtra Act No. 53 of 1948 as modified by Maharashtra Act No. XI of 1968 as under :

*"12-A. Registration of change of name.*—(1) Where a proposition for change of name has been agreed to and confirmed in the manner prescribed by Section 12, a copy of the proposition so agreed to and confirmed shall be forwarded to the Registrar for registering the change of name. If the proposed change in name is in his opinion undesirable for any of the reasons mentioned in Section 3-A, the Registrar shall refuse to register the change of name.

18. *Ram Kumar v. State of West Bengal*, AIR 1963 Cal 534 at 546.

(2) Save as provided in sub-section (1), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case. On the issue of such a certificate the change of name shall be complete.

(3) The Registrar shall charge for any copy of a certificate issued under sub-section (2) a fee of rupee one and all fees so paid shall be accounted for to the Provincial Government.

(4) If, through inadvertence or otherwise, a society is registered by a name, which should not have been registered (due regard being had to the provisions of Section 3-A), the Registrar may, after hearing the party concerned, direct the society to change the name; and the society shall change its name within a period of three months from the date of the direction in accordance with the provisions of this Act or such longer period as the Registrar may think fit to allow."

**Orissa**—A new Section 12-A has been added to the principal Act, *vide* Orissa Act, No. 8 of 1969 as under:

"12-A. *Registration of change of name*—(1) Where a proposition for change of name has been agreed to and confirmed in the manner prescribed by Section 12, a copy of the proposition so agreed to and confirmed shall be forwarded to the Registrar of Societies for registering the change of name. If the proposed name is identical with that by which any other existing society has been registered or in the opinion of the Registrar so nearly resembles the name of such other society as is likely to deceive the public or the members of either society, the Registrar shall refuse to register the change of name.

(2) Save as provided in sub-section (1), the Registrar shall, if he is satisfied that the provisions of this Act in respect of the change of name have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case. On the issue of such certificate the change of name shall be complete.

(3) The Registrar shall charge for any copy of a certificate issued under sub-section (2) a fee of rupee one and all fee so paid shall be accounted for to the State Government."

#### **Pondicherry**

In its application to the Union territory of Pondicherry, after Section 12, insert the following section, namely,—

"12-A. *Change of name*—Any number not less than three-fifths of the members of any society registered under Section 3 may, subject to the provisions of Section 12-B, by a resolution or otherwise change its name."

#### **Punjab**

"12-A. *Registration of change of name*—(1) Where a proposition for change of name has been agreed to and confirmed in the manner prescribed by Section 12, a copy of the proposition so agreed to and confirmed shall be forwarded to the Registrar of Companies for registering the change of name. If the proposed name is identical with that by which any other existing society has been registered, or in the opinion of the Registrar so nearly resembles such name as to be likely to deceive the public or the members of either society, the Registrar shall refuse to register the change of name.

(2) Save as provided in sub-section (1), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name

have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case. On the issue of such a certificate the change of name shall be complete.

(3) The Registrar shall charge for any copy of a certificate issued under sub-section (1) a fee of rupee one and all fees so paid shall be accounted for to the State Government.”<sup>19</sup>

#### Rajasthan

“12-A. *Change of name of societies*—Any society registered under this Act may, with the consent of not less than two-thirds of its members by a resolution passed at a special general meeting convened for the purpose in accordance with the rules and regulations of the society and subject to the provisions of Section 12-B, change its name.”

#### West Bengal

“12-A. *Registration of change of name*—(1) Where a proposition for change of name has been agreed to and confirmed in the manner prescribed by Section 12, a copy of the proposition so agreed to and confirmed shall be forwarded to the Registrar of Joint Stock Companies for registering the change of name. If the proposed name is identical with that by which any other existing society has been registered, or in the opinion of the Registrar so nearly resembles such name as to be likely to deceive the public or the members of either society, the Registrar shall refuse to register the change of name.

(2) Save as provided in sub-section (1), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case. On the issue of such a certificate the change of name shall be complete.

(3) The Registrar shall charge for any copy of a certificate issued under sub-section (2) a fee of rupee one and all fees so paid shall be accounted for to the State Government.”<sup>20</sup>

## Section 12-B

#### States Amendments

**Assam**—A new Section 12-B has been added to the principal Act, vide Assam Act No. 14 of 1948 as under :

“12-B. *Notice of change of name*—(1) Notice in writing of every change of name, signed by the Secretary and by seven members of the society changing its name, shall be sent to the Registrar.

(2) If the proposed name is identical with that by which any other existing society has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public, the Registrar shall refuse to register the change of name.

(3) Save as provided in sub-section (2), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and the change of name shall have effect from the date of such registration.”

19. Section 3 of Punjab Act No. VI of 1949.

20. Section 8 of West Bengal Act No. XVI of 1950.



**Bihar**—A new Section 12-B has been *added* to the principal Act, *vide* Bihar Act No. 14 of 1948, as under :

*"12-B. Notice of change of name—*(1) Notice in writing of every change of name signed by the Secretary and by seven members of the society changing its name shall be sent to the Registrar.

(2) If the proposed name is identical with that by which any other existing society has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either society, the Registrar shall refuse to register the change of name.

(3) Save as provided in sub-section (2), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and the change of name shall have effect from the date of such registration."<sup>21</sup>

**Maharashtra**—A new Section 12-B has been *added* to the principal Act, *vide* Maharashtra Act No. 53 of 1948, as under :

*"12-B. Effect of change of name.—*The change in the name of a society shall not affect any rights or obligations of the society nor render defective any legal proceeding by or against the society, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name."

*"12-B. Registration of change of name.—*(1) Where a proposition for change of name has been agreed to and confirmed in the manner prescribed by Section 12-A, a copy of the proposition so agreed to and confirmed shall be forwarded to the Registrar of Companies for registering the change of name.

(2) Same as provided in Section 18-A, the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case. On the issue of such a certificate, the change of the name shall be complete.

(3) The Registrar shall charge for any copy of a certificate issued under sub-section (2), a fee of rupee one and fees so paid shall be accounted for to the Government."

### Punjab

*"12-B. Effect of change of name.—*The change in the name of a society shall not affect any rights or obligations of the society or render defective any legal proceeding by or against the society; and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name."<sup>22</sup>

**Orissa**—A new Section 12-B has been *added* to the principal Act, *vide* Orissa Act No. 8 of 1969, as under :

*"12-B. Effect of change of name—*The change in the name of a society shall not affect any rights or obligations of the society or render defective any legal proceeding by or against the society; and any legal proceeding which might have been continued or commenced by or

21. Section 2 of Bihar Act No. XXX of 1948.

22. Section 4 of Punjab Act No. VI of 1949.

against it by its former name may be continued or commenced by or against it by the new name."

### Rajasthan

"12-B. *Notice of change of name*—(1) Notice in writing of every change in name signed by the Secretary and by seven members of the society changing its name shall be sent to the Registrar, within fifteen days of the passing of the resolution under Section 12-A.

(2) The Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case.

(3) The change of name shall be complete on the issue of a certificate under sub-section (1) and shall have effect from the date of the issue thereof.

(4) The Registrar shall charge for any copy of a certificate issued under sub-section (2) a fee of one rupee and all fees so paid be accounted for to the State Government."

### West Bengal

"12-B. *Effect of change of name*—The change in the name of a society shall not affect any rights or obligations of either the members who were admitted prior to the change or of the society or render defective any legal proceeding by or against the society; and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name."

## Section 12-C

### States Amendments

**Assam**—A new Section 12-C has been added to the principal Act *vide* Assam as under:

"12-C. *Effect of change of name*.—The change in the name of a society registered under this Act shall not affect any rights or obligations of the society or render defective any legal proceeding by or against the society, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name."<sup>23</sup>

### Maharashtra

"12-C. *Registration of change of name affected by coming into force of Bombay Act LIII of 1948*—If any society registered under this Act has, before the date of the coming into force of the Societies Registration (Bombay Amendment) Act, 1948 (Bombay Act LIII of 1948), intimated to the Registrar of Companies the change of its name and if the Registrar has recorded such change, the Registrar may, notwithstanding anything contained in this Act, or an application made by the society in this behalf and on payment of a fee as provided for in sub-section (3) of Section 12-A, register the change of such name and issue a certificate to the society under sub-section (2) of the said Section 12-A. On the issue of such certificate the change shall be deemed to be complete from the date on which such change was recorded by the Registrar,

23. Section 2 of Assam Act No. XIV of 1948.

notwithstanding the fact that the society had not followed the procedure prescribed in Sections 12 and 12-A."<sup>24</sup>

### Orissa

"12-C. *Registration of change of name affected before commencement of the Societies Registration (Orissa Amendment) Act, 1969*—If any society registered under this Act has, before the date of the coming into force of the Societies Registration (Orissa Amendment) Act, 1969, intimated to the Registrar the change of its name and if the Registrar has recorded such change the Registrar may, notwithstanding anything contained in this Act, on an application made by the society in this behalf and on payment of fees as provided in sub-section (3) of Section 12-A register the change of such name and issue a certificate to the society under sub-section (2) of the said section. On the issue of such certificate the change shall be deemed to be complete from the date on which such change was recorded by the Registrar."

"12-G. *Effect of change of name*—The change in the name of society shall not affect any rights or obligations of the society or render defective any legal proceeding by or against the society, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name." —Pondi. Act IX of 1969, S. 5 (1-1-1970).

### Rajasthan

"12-G. *Effect of change of name*—The change in the name of a society registered under this Act shall not affect any rights or obligations of the society or render defective any legal proceeding by or against the society, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name."<sup>25</sup>

### West-Bengal

"12-C. *Registration of change of name affected in certain cases*—If any society registered under this Act has, before the date of coming into force of the Societies Registration (West Bengal Amendment) Act, 1950, intimated to the Registrar of Joint Stock Companies the change of its name and if the Registrar has recorded such change, the Registrar may, notwithstanding anything contained in this Act, or an application made by the society in this behalf and on payment of a fee as provided for in sub-section (3) of Section 12-A, register the change of such name and issue a certificate to the society under sub-section (2) of the said Section 12-A. On the issue of such certificate the change shall be deemed to be complete from the date of which such change was recorded by the Registrar, notwithstanding the fact that the society had not followed the procedure prescribed in Sections 12 and 12-A."<sup>26</sup>

## Section 12-D

### States Amendments

**Maharashtra**—Insertion of new Sections 12-D and 12-E to the principal Act, vide Maharashtra Act XI of 1968, as under:

"12-D. *Maintenance of accounts and their balancing and auditing*.—(1) Every governing body entrusted with the management of the affairs

24. Section 3 of Bombay Act No. LIII of 1948.

25. Sections 12-A, 12-B and 12-C of Rajasthan Act No. XXVIII of 1958.

26. Section 4 of West Bengal Act No. XVI of 1950.



of a society registered under this Act (not being a public trust within the meaning of the Bombay Public Trusts Act, 1950), (Bombay XXIX of 1950), shall keep regular accounts.

(2) Such accounts shall be kept in such form as may be approved by the Registrar, and shall contain such particulars as may be prescribed by rules.

(3) The accounts shall be balanced each year on the thirty-first day of March or such other day as may be fixed by the Registrar.

(4) The accounts shall be audited annually in such manner as may be prescribed by rules and by a person who is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), or by such other persons as may be authorised in this behalf by the State Government.”<sup>27</sup>

## Section 12-E

### State Amendments

#### Maharashtra

“12-E. Auditor’s duty to prepare balance-sheet and to report irregularities etc.—It shall be the duty of every auditor auditing the accounts of a society under Section 12-D to prepare a balance-sheet and income and expenditure account and to forward a copy of the same to the Registrar.

(2) The auditor shall in his report specify all cases of irregular, illegal or improper expenditure, or failure or omission to recover moneys or other property belonging to the society or of loss or waste of money or other property thereof; and state whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust, or misapplication or any other misconduct on the part of the governing body or any other person.”<sup>28</sup>

**13. Provision for dissolution of societies and adjustment of their affairs**—Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the

27. Added to the Principal Act by Maharashtra Act No. XI of 1968.

28. Added to the Principal Act by Maharashtra Act No. XI of 1968.

adjustment of its affairs shall be referred to the principal court of original civil jurisdiction of the district in which the chief building of the society is situate; and the court shall make such order in the matter as it shall deem requisite :

**Assent required**—Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy at a general meeting convened for the purpose :

**Government consent**—Provided that whenever any Government is a member of, or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of the Government of the State of registration.

# SYNOPSIS

- |                                                    |                                        |
|----------------------------------------------------|----------------------------------------|
| 1. Legislative changes.                            | 6. Disputes on dissolution of society. |
| 2. State amendments.                               | 7. Bye-laws in contravention of the    |
| 3. Modified law in certain States.                 | section are invalid and inoperative.   |
| 4. English Law.                                    |                                        |
| 5. Principal court of original civil jurisdiction. |                                        |

**1. Legislative Changes**—The word ‘any’ occurring in the second proviso was *substituted* for the word ‘the’ by the Adaptation of Indian Laws Order, 1957 and the words ‘without the consent of the Government of the State of registration’ were *substituted* for the words ‘without the consent of the Government’ by the Adaptation of Indian Laws Order, 1937. The word ‘State’ was *substituted* for the word ‘Province’ by the Adaptation of Laws Order, 1950.

**2. State Amendments**—The amendments made by amending Acts in certain states are given below :

## Assam

*Amendment of Section 13 of Act XXI of 1860*—(1) In Section 13 of the said Act—

- after the words “as the governing body” the words “or special committee formed to replace the governing body in respect of all matters affecting the winding up of the affairs of the society” shall be *inserted*;
- after the words “the said governing body” the words “should it have not been replaced by the aforesaid special committee in respect of all matters affecting the winding up of the society, or the said special committee”, shall be *inserted*.

(2) After Section 13 of the Act, the following proviso shall be inserted as the first proviso, namely,—

“Provided that any matter decided by three-fifths of those present either in person or by proxy at any meeting of the members of the society or of the governing body thereof or of any special committee appointed at a general meeting for the purpose of winding up of the affairs of a society shall not be deemed to be a matter of dispute within the meaning of this section.”<sup>1</sup>

**3. Modified law in certain States**—In the following States modified provisions have been made in their respective State Acts which are as follows :

#### Andhra Pradesh

“*Dissolution of society and adjustment of its affairs*—No registered society shall be dissolved unless two-thirds of the members present at a meeting convened for the purpose to determine and at the same meeting when it is to be dissolved, the method to be followed for the disposal and settlement of its property and debts shall also be determined :

Provided that if the Government is a member of, or contributes or has contributed to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of the Government.”<sup>2</sup>

“*Dispute regarding management*—In the event of any dispute arising among the Managing Committee or the members of the society, in respect of any management or dissolution of the society, any member of the society may file an application in the district court concerned, and the said court shall, after necessary inquiry, pass such order as it shall deem fit.

*Explanation*—“District Court” shall mean, in the city of Hyderabad, First Judge of the City Civil Court.”<sup>3</sup>

*Appropriation of society's property*—If upon the dissolution of the society there shall remain after the satisfaction of all its debts any property, the same shall not be paid to all or any of the members of the society, but shall be given to some other society to be determined by a majority of votes of the members present at a meeting convened to resolve the dissolution, or if no such resolution is passed, by such court as aforesaid :

Provided that nothing contained in this section shall apply to anybody which has been established by the contributions of share-holders in the nature of a Joint Stock Company.”<sup>4</sup>

#### Mysore

“*Provision for dissolution of societies and adjustment of their affairs*—Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said

1. Section 2 of Assam Act No. XV of 1948.
2. Section 10 of A. P. Act No. 1 of 1350 F.
3. Section 11 of A. P. Act No. 1 of 1350 F.
4. Section 12 of the above Act.



governing body or the members of the society, the adjustment of its affairs shall be referred to the principal court of original civil jurisdiction of the district in which the chief building of the society is situate; and the court shall make such order in the matter as it shall deem requisite :

*Assent required*—Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose :

*Government consent*—Provided that whenever the Government is a member of, or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of the Government.”<sup>5</sup>

### Rajasthan

*“Provision for dissolution of societies and adjustment of their affairs*—Any number not less than two-thirds of the members of a society, registered under this Act, may determine that it shall be dissolved, and thereupon it shall stand dissolved forthwith or at the time then agreed upon and all necessary steps shall be taken for the disposal and settlement of the property of the society and its claims and liabilities according to the rules and regulations of the said society, applicable thereto, if any, and, if not, then as the governing body, or a special committee formed to replace the governing body in respect of all matters affecting the winding up of the affairs of the society, shall find expedient :

Provided that—

- (i) in the event of any dispute arising among the governors, directors, trustees or members of the said governing body or, if it has been replaced by a special committee as aforesaid, among the members thereof or among the members of the society, the adjustment of its affairs shall be referred to the principal court of original civil jurisdiction of the district in which the principal office of the society is situate and the court shall make such order in the matter as it shall deem requisite ;
- (ii) any matter decided by two-thirds of the members of the society or of the governing body thereof or of any special committee formed to replace the governing body for the purpose of winding up the affairs of the society present either in person or by proxy at a meeting of such society or governing body or special committee shall not be deemed to be a matter of dispute within the meaning of clause (i) ;
- (iii) no society shall be dissolved unless two-thirds of its members shall have expressed a wish for such dissolution by their votes delivered in person or by proxy at a special general meeting convened for the purpose ;
- (iv) whenever any Government is a member of, or a contributor to, or otherwise interested in any society registered under this Act, such society shall not be dissolved without the consent of such Government ; and
- (v) nothing in this section shall be deemed to affect any provisions contained in any instrument for the dissolution of such society.”<sup>6</sup>

5. Section 14 of Mysore Act No. 111 of 1904.

6. Section 13 of Rajasthan Act No. XXVIII of 1958.

**4. English Law—Modes of dissolution**—Registered societies and branches may be terminated or dissolved in any of the following ways, namely: (1) Upon the happening of any event declared by Rules to be the termination of a society or branch; or (2) by instrument of dissolution; or (3) by award of the Chief Registrar.

A registered society which has more than seven members may also be wound up by the Court as an unregistered company under the Companies Act, 1948.

*Friendly societies*—A registered friendly society or branch may be dissolved with the consent: (1) of five-sixths in value of the members, including honorary and infant members, their consent being testified by their signatures to an instrument of dissolution; and (2) of all persons entitled to any relief, annuity, or other benefit from the funds of the society or branch; unless their claims are satisfied or adequate provision is made for that purpose. In the case of a branch the dissolution must be with the consent of the central body or in accordance with the general Rules of the society.

*Other societies*—A registered society or branch other than a friendly society or branch may be dissolved with the consent of three-fourths of the members, their consent being testified by their signatures to an instrument of dissolution.

*Instrument of dissolution*—The instrument of dissolution of a registered society or branch must set forth:

- (1) the liabilities and assets in detail;
- (2) the number of members and the nature of their interests;
- (3) the claims of creditors and the provision to be made for their payment;
- (4) The intended appropriation or division of the funds and property, unless the appropriation or division is stated in the instrument to be left to the award of the Chief Registrar. In the case of a registered friendly society or branch the instrument must not direct or contain any provision for a division or appropriation of the funds of the society or branch, or any part thereof, otherwise than for the purpose of carrying into effect the objects of the society or branch as declared in its Rules, unless the claim of every member or person claiming any relief, annuity or other benefit from the funds is first duly satisfied or adequate provisions are made for satisfying those claims.

The instrument must be signed in duplicate, and registered with all alterations in the same manner as the statute provides for the registry of amendment of Rules. When sent for registration, it must be accompanied by a statutory declaration by one of the Trustees or by three members and the Secretary of the society or branch that the provisions of the statute have been complied with. The registrar returns one of the duplicates of the instrument of dissolution to the society, or in the case of a branch, through the society, with an acknowledgment of registry. The instrument does not require to be stamped.

Subject to similar provisions regarding consents, signatures and registration as are required for the dissolution, the instrument of dissolution may be altered.

*Application by dissatisfied member to County Court*—Any member or person claiming any relief, annuity or other benefit from the funds of the society, and who is dissatisfied with the provision made in the instrument of dissolution for satisfying his claim, may apply to the County Court of the district within which the chief or any other place of business of the society is situated for relief or other order, and that Court has the same power in the matter as in regard to settlement of disputes.<sup>7</sup>

**5. Principal Court of original civil jurisdiction**—Under the present section, if dispute arises on dissolution of a society as to the adjustment of its affairs, it is to be referred to the principal Court of original civil jurisdiction of the district where the principal building of the society is situated. Thus this section confers jurisdiction on the district Civil Court only and no other Court can maintain reference. The expression 'district Court' means a city Civil Court where there is one and where there is no such Court the principal Civil Court of original jurisdiction. This expression has also been defined in clause (4) of Section 2 of the Civil Procedure Code, 1908, to mean the principal Civil Court of original jurisdiction and also includes the local limits of the ordinary original civil jurisdiction of the High Court. It has been held that where there is a city Civil Court the jurisdiction of a chartered High Court, which although has a concurrent jurisdiction with the city Civil Court, is ousted.<sup>8</sup>

It is a settled law that jurisdiction upon a Court is conferred by a statute, and therefore, the consent of the parties cannot invest a Court with jurisdiction which it does not possess.<sup>9</sup> The waiver

7. Halsbury's Laws of England, 3rd, Edn., Vol. 18., pp. 100, 101, 102, 103.

8. In the matter of S. K. Roy, AIR 1949 Pat 318.

9. *Mahavir Singh v. Deep Narain Tiwari*, AIR 1931 All 490: 134 IC 236 (FB).



does not ordinarily affect the question of jurisdiction.<sup>10</sup> However, it has been held that where the Court has jurisdiction over the subject-matter, but there are irregularities in the initial procedure, the defendant who without objection goes to trial upon the merits, cannot subsequently dispute the jurisdiction of the Court.<sup>11</sup> It may be noted that there is no estoppel against the defendant even if he does not object to the jurisdiction of the Court, provided there is complete absence of jurisdiction in the Court.<sup>12</sup> But where the Court has jurisdiction over the subject-matter of the action and the defendant protests against the Court's jurisdiction on the ground of his being a foreigner, he will not be permitted to raise the question of jurisdiction after he has defended the suit on the merits and taken his chance of winning the case.<sup>13</sup> It is not open to the parties to waive the bar of limitation or jurisdiction by agreement.<sup>14</sup>

**6. Disputes on dissolution of society**—The present section lays down the law that in the event of dissolution of a society necessary steps must be taken for the disposal and settlement of the property belonging to such society, its claims and liabilities according to the rules and regulations, or if the rules do not provide, then at the discretion of the governing body. If any dispute regarding the adjustment of the affairs of such society arises, it must be referred to the principal Court of original civil jurisdiction of the district where the principal office of the society is situated. A reference to arbitration is not permitted under the law.<sup>15</sup>

**7. Bye-laws in contravention of this section are invalid and inoperative**—The provisions in the bye-laws of the society that it shall stand dissolved in case no Santsad Guru re-appeared within two years of the death of the last Santsad Guru militates against the provisions of Section 13 of the Act and must, therefore, be deemed to be invalid and inoperative.<sup>16</sup>

**14. Upon a dissolution no member to receive profit**—If upon the dissolution of any society registered under this Act there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever,

10. *Panchu v. Dy. Commissioner, Sultanpur*, AIR 1929 Oudh 286 : 113 IC 734.

11. *Rajagopala Pandarathar v. Tirupathia Pillai*, ILR 49 Mad 746 : 95 IC 2.

12. *Shama Kanta Chatterji v. Kusum Kumari*, ILR 44 C 10 : 38 IC 571.

13. *Gaekwar Baroda State Rly. v. Sheikh Habibullah*, AIR 1934 All 741 : 151 IC 724.

14. *Sitarama Chetty v. Krisnaswami Chetty*, ILR 38 Mad 374 : 27 IC 174.

15. *Sheikh Mohammad Abdul Qadir v. Anjuman Moinia Fakaria*, 1940 AMLJ 27.

16. *Shanti Sarup v. R. S. Sabha*, AIR 1969 All 248 at 257.

the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or, in default thereof, by such court as aforesaid :

**Clause not to apply to Joint Stock Companies—** Provided, however, that this clause shall not apply to any society which shall have been founded or established by the contributions of share-holders in the nature of a Joint Stock Company.

### SYNOPSIS

- |                                    |                                              |
|------------------------------------|----------------------------------------------|
| 1. State amendments.               | 5. Society whether a company or partnership. |
| 2. Modified law in certain States. | 6. Surplus property how distributed.         |
| 3. English Laws.                   |                                              |
| 4. Applicability.                  |                                              |

**1. State Amendments**—The amendments made by amending Acts in certain State are given below :

#### Assam

*“Amendment of Section 14 of Act XXI of 1860—*In Section 14 of the said Act, after the words “some other society”, the words “whether registered under this Act or not” shall be *inserted*”.<sup>1</sup>

In its application to the State of Gujarat, amendment made in Section 14 is the same as that of Maharashtra. —Guj. A. L. O., 1961 & Act XI of 1960, S. 83.

#### Maharashtra

*“Amendment of Section 14—*Notwithstanding anything contained in Section 14 of the Societies Registration Act, 1860 (XXI of 1860), hereinafter called “the said Act”, it shall be lawful for the members of any society dissolved under Section 13 of the said Act to determine by a majority of the votes of the members present personally or by proxy at the time of dissolution of such society that any property whatsoever remaining after the satisfaction of all its debts and liabilities shall be given to Government to be utilised for any of the purposes referred to in Section 1 of the said Act.”<sup>2</sup>

*Note—*The application of Bombay Act No. II of 1912 amending Section 14 of this Act was extended to the former State of Ajmer<sup>3</sup> and also to the former State of Delhi.<sup>4</sup>

**2. Modified law in certain States**—In the following States modified provisions have been made in their respective State Acts which are as under :

1. Section 3 of Assam Act No. XV of 1948.
2. Section 1 of Bombay Act No. II of 1912.
3. Notified in the *Gazette* of India, dated 18th Nov., 1950, Part II, Section 3, p. 977.
4. Notified in the *Gazette* of India, dated April 2, 1950, Part I, p. 166.

**Mysore**

*Upon dissolution no member to receive profit*—If upon the dissolution of any society registered under this Act, there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution or, in default thereof, by such court as aforesaid :

*Clause not to apply to Joint Stock Companies*—Provided, however, that this clause shall not apply to any society which shall have been founded by the contributions of share-holders in the nature of a Joint Stock Company.”<sup>5</sup>

**Rajasthan**

“14. *Upon dissolution no member to receive surplus property*—If upon the dissolution of any society registered under this Act there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, whether registered under this Act or not, to be determined by the votes, of not less than two-thirds of the members present personally or by proxy at the time of the dissolution, or, in default thereof, by such court as aforesaid :

Provided that this section shall not apply to any society which shall have been founded or established by the contributions of share-holders in the nature of a Joint Stock Company :

Provided further that nothing in this section shall be deemed to affect any provision contained in any instrument for the payment or distribution of the property of a society dissolved under Section 13.”<sup>6</sup>

**3. English Law—Funds of defunct society**—The remaining fund of a registered society which is not a charity, and which becomes defunct though having no members, belongs to the Crown as *bona vacantia*. If it is a charity, the remaining fund will be applied on the principle of *cypres*.<sup>7</sup>

**4. Applicability**—Section 44 of the Indian Income-tax Act gives an indication as to when the personal liability of the members of an association may arise. That arises on the discontinuance of the business of the association or firm or where an association of persons is dissolved. Thus where all the assessments excepting for one year, had been at a time when the petitioners were members of the Society. Held, that admittedly the association of persons had not discontinued the business and there had been no dissolution. So the section could not help the Department.<sup>8</sup>

5. Section 15 of Mysore Act No. III of 1904.

6. Section 14 of Rajasthan Act No. XXVIII of 1958.

7. Halsbury's Laws of England, 3rd Edn., Vol. 18, p. 101.

8. *Satchitanand v. 2nd Additional I. T. Officer*, AIR 1964 Ker 118 at p. 119.



**5. Society whether a company or partnership**—A society registered under the Societies Registration Act, 1860, is neither a corporation nor a company incorporated under the Companies Act, 1956. It is also not a partnership registered under the Partnership Act, 1932. It is a registered society of the individuals which has acquired the legal status by reason of its registration.<sup>9</sup> It continues to exist and to function as such until its dissolution under the provisions of the Act. The properties of the society continue to be vested in the trustees or in the governing body irrespective of the fact that the members of the society for the time being are not the same as they were before, nor will be the same thereafter, that is in other words they are not always the same but fluctuate from time to time. The trustees or the governing body or the members of a society have no beneficial interests in the property belonging to the society like the share-holders of a company or the partners of a partnership firm.<sup>10</sup>

**6. Surplus property how distributed**—The members of a society, not having any personal beneficial interest in the property of the society, cannot receive any profit or surplus property on the dissolution of a society. They are, however, entitled to determine by the vote of prescribed majority to which other society the surplus property be given. It has been held that the surplus property of a dissolved society must be given to some kindred society.<sup>11</sup> It should also be noted that since a literary society carries no business, so it cannot be wound up as an unregistered company.<sup>12</sup>

The proviso to the present section provides that where a society is founded or established by the contributions of the share-holders in the nature of a Joint Stock Company, the share-holders are entitled to receive the surplus property on the dissolution of the society and the provisions of this section are not applicable to them. Where a literary or scientific society is founded by the issue of transferable shares, the holders of the shares are entitled to receive the surplus property on its dissolution.<sup>13</sup> Similarly, where a society owns a common property arising out of the subscriptions of the members, the members are entitled to receive the surplus property on the dissolution of the society.<sup>14</sup>

9. *Osborne v. Amalgamated Society of Railway Servants*, (1909) 1 Ch 163 at p. 190: 78 LJ Ch 204.

10. *Pamulapati Buchi Naidu College Committee v. State of Andhra Pradesh*, AIR 1958 MP 773.

11. *In re Bristol Athenacum*, (1889) 43 Ch D 236: 32 Digest 550.

12. *Ibid.*

13. *Re Russell Institution, Figgins v. Baghino*, (1898) 2 Ch 72.

14. *Re Jones Clegg v. Ellison*, (1898) 43 Ch 83.

**Section 14-A****State Amendment****Bihar**

A new Section 14-A has been *added* to the principal Act, *vide* Bihar Act No. 2 of 1960, as under :

**"14-A. Disposal of property of a dissolved society**—Notwithstanding anything contained in Section 14 it shall be lawful for the members of any society dissolved under Section 13 to determine by a majority of the votes of the members present personally or by proxy at the time of the dissolution of such society that any property whatsoever remaining after the satisfaction of all the debts and liabilities shall be given to Government to be utilised for any of the purposes referred to in Section 1, *vide* Act No. 2 of 1960."

**"14-A. Surplus property may be given to Government**—Notwithstanding anything contained in Section 14, it shall be lawful for the members of any society dissolved under Section 13 to determine by the votes of not less than two-thirds of their total number that any property whatsoever remaining after the satisfaction of all its debts and liabilities shall be given to the State Government to be utilised for any of the purposes specified in Section 1-B."<sup>1</sup>

**15. Member defined**—For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations :

**Disqualified members**—But in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.

**SYNOPSIS**

- |                    |                             |
|--------------------|-----------------------------|
| 1. Member defined. | 3. Admission to membership. |
| 2. English law.    | 4. Eligibility to vote.     |

**1. Member defined.**—See *Note 2, under the Commentary of Section 2—supra.*

**2. English law—Admission of members**—The manner and terms of admission of members to registered societies and branches are provided in their Rules. There is no limitation upon the maximum number of members unless it is fixed by rule. A

1. Section 14-A of Rajasthan Act No. XXVIII of 1958.

society must have seven members before it can be registered. There is no statutory provision that a registered society loses its right to remain registered if the membership is reduced below seven, but as an amendment of Rule must be signed by three members, it can hardly exist for practical purposes with less than that member. The rules of a registered friendly society generally limit the age at which a person can be admitted.

**Minors**—The Rules of a registered society or branch may provide for the admission of a person under twenty-one years of age as a member. The privilege is generally not extended to specially authorised societies. A member under twenty-one years may, if he is over sixteen years by himself, and if he is under that age by his parent or guardian, execute all instruments and give all acquittances necessary to be executed or given under the Rules, but he cannot be a member of the Committee or a Trustee, manager, or treasurer. The power to execute necessary instruments under the Rules does not enable an infant validly to execute a mortgage which, under the Infants Relief Act, 1874, is void.

**Married women**—A married woman may become a member of a registered society or branch if its Rules allow, and be subject to all the obligations of membership. The interest of a married woman is a provident, friendly, or benefit society in her sole name, or in her name jointly with any person other than her husband, is deemed to be her property, unless and until the contrary is shown. If any interest has been acquired by her with her husband's money without his consent, the Court may order a transfer to the husband. A policy effected by a man on his own life and expressed to be for the benefit of his wife, or his children, or his wife and children or any of them, or by a woman on her own life and expressed to be for the benefit of her husband or her children or her husband and children or any of them, creates a trust in favour of the objects therein named, and the sum payable does not form part of his or her estate unless the policy was proved to have been taken out with intent to defraud his or her creditors in which case the creditors are entitled to receive out of the monies payable under the policy a sum equal to the premium so paid. He or she may also appoint, by the policy or by a signed memorandum, a Trustee or Trustees of the sum payable.

**Corporate bodies**—The Friendly Societies Act, 1896, does not give a definition of the word "person" or "member" wherever used in the Act. The nature of most of the purposes of a registered friendly society and a number of the provisions in the Act are consistent only with its benefits being enjoyed by members who are actual and not artificial persons, but it is conceived that, if the authority is given in its own Articles of Association or Rules, a body corporate such as an employer company



or industrial and provident society can be a member of a registered society if its Rules so provide, for the purpose of contributing to its funds without participating in its benefits, and that the Rules can provide for such a company or society exercising such rights of membership as attendance at meetings and voting by representatives. This might also be the case in a registered benevolent society for the purpose of contributing to the funds without being the object of its benevolence. It would follow that such bodies corporate could be admitted as honorary members without any right or benefits. Some registered societies may have purposes which might be enjoyed both by corporate and individual members, such as the lending of money to members by specially authorised loan societies or insurance against loss of fishing boats and of cattle. It may be that in this case, if the word "person" is construed according to the meaning given to it in the Interpretation Act, 1889, rules can provide for the admission of a body corporate.

**Honorary members**—The Rules of registered societies and branches may provide for the admission of honorary members. Although Rules may give them no right of voting on the society's affairs, they have the same power as ordinary members to determine whether or not the society or branch shall dissolve.

**Rights of members individually**—In addition to any rights which Rules of a registered society or branch may confer on a member, he has certain statutory rights, which are usually also provided for by the Rules of the society. These rights are:

- (1) To have delivered to him a copy of the Rules of the society, and also, if a member of a branch, a copy of the branch Rules on demand, on payment of a sum not exceeding £2;
- (2) To inspect the books at all reasonable hours at the registered office or wherever the same are kept, with an exception as to loan accounts;
- (3) To have delivered to him gratuitously on application a copy of the last annual return of the society or branch or of a balance-sheet or other document duly audited containing the same particulars so to the receipts and expenditure, funds and effects, of the society or branch as are contained in to annual return;
- (4) If over sixteen years of age, make a nomination of money not exceeding £200 payable on his death, and to vary or revoke any nomination;
- (5) On dissolution of a society or branch, if claiming any relief or benefit, to have his claim satisfied or adequately provided for;

- (6) Similarly, to have his claim satisfied or provided for on an amalgamation or transfer of engagements ;
- (7) To commence proceedings for setting aside the dissolution of a society or branch within three months of the date of its advertisement in the *London Gazette* ;
- (8) To protection against deprivation of membership or fines through service in the forces of the Crown and, where the member is not on a regular engagement, protection of his interest in the society or branch in certain cases where he has ceased to pay contributions ;
- (9) With proper authority to institute prosecution on behalf of the society or branch ;
- (10) Where the Rules contain no direction as to disputes or where no decision is made within forty days (with some modification of this period in the case of a branch) after application to the society or branch for a reference under its Rules, to have a dispute between himself and the society or branch or officers thereof determined by Justices or in the County Court ;
- (11) To make application to the County Court for the enforcement of a decision on a dispute under the society's Rules ;
- (12) If a member of a registered friendly society or branch, to have a surrender value or free policy in respect of endowment assurances on the lives of certain relatives and on the life of a child under ten years of age.

Members of collecting societies have further statutory rights in respect of notice before forfeiture, surrender values and free policies on life assurances and other matters.

**Rights of members collectively**—Certain proportions or numbers of members of registered societies and branches have the following statutory rights, which are exercisable irrespective of Rules :

- (1) One-fifth of the members, or certain other proportions according to the total membership, can make applications to the Chief Registrar for the appointment of an Inspector to investigate the affairs of a society or branch, for the calling of a special meeting, and also for an investigation with a view to dissolution on the ground that the funds are insufficient to meet existing claims or that the rates of contribution fixed in the Rules are insufficient to cover benefit assured. The consent of the central body of a registered society is required to any such application in respect of a branch ;

- (2) A majority of five-sixths in value of the members calculated by votes according to length of membership can decide on dissolution of a registered friendly society or, with the consent of the central body, of a branch;
- (3) A majority of three-fourths of the members of a registered society or branch other than a registered friendly society or branch can decide on dissolution;
- (4) By special resolution, members of a registered society can change the registered name; become amalgamated with another registered society or with a company; transfer the society's engagements to another registered society or company and convert the registered society into a company. In the case of registered freindly societies, special resolutions for amalgamation, transfer of engagements, or conversion have to be consented to in writing by a five-sixth majority in value of the members and by all persons in receipt of benefits unless the consents are dispensed with by the Chief Registrar.

**Withdrawal**—The right of a member to terminate his membership of a registered society or branch must be ascertained according to the provisions in the Rules. If there is no provision on this matter, it would seem that a member can resign his membership at any time. The resignation need not be accepted by the society, and therefore cannot be withdrawn after it has been received. It would also seem that if by the Rules notice of withdrawal is required, but no particular form is prescribed, and it is not stated to whom notice is to be given, parol notice given by a member to the Secretary or an officer or other person through whom the original contract with the society was made is sufficient.

**Cessation of membership by non-payment of subscriptions**—It is generally provided in the Rules that if contributions are in arrears for a stated period membership shall cease. A collecting society is required to give twenty-eight days' written notice before an interest or benefit in an insurance can be forfeited, but in the case of any other registered society or branch, whether, or not a notice is required depends only on the provisions in the Rules.<sup>1</sup>

**3. Admission to membership**—The society is empowered to make its own rules and regulations for the admission of persons to its membership. The Act does not lay down any rule making

1. Halsbury's Laws of England, 3rd Edn., Vol. 18, pp. 50, 51, 52, 53, 60, 61.



it obligatory on the governing body of the society to admit a member of the public on payment of the prescribed subscription.<sup>2</sup> A firm may also be admitted to the membership of a society, but the investment of its property by the society with the firm which has been admitted to its membership will not make the firm a trustee of the said property.<sup>3</sup>

**4. Eligibility to vote**—This section makes it clear that a person whose subscription at the time shall have been in arrears for a period exceeding three months is not eligible to vote. Thus, where a person's name is entered on the roll of the members but who has not paid subscription for a period more than three years, it is improper to take into consideration his vote or to count it for the determination of quorum.<sup>4</sup> However, a requisition by members to call a meeting which is otherwise valid does not become invalid merely because it is signed by some members who were not eligible to vote at the meeting.<sup>5</sup>

**16. Governing body defined**—The governing body of the society shall be the governors, council, directors, committee, trustees, or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

## SYNOPSIS

1. English Law.
2. Governing body defined.
3. Position of governing body.

**1. English Law—Necessary and usual officers**—The affairs of a registered society or branch are managed through its officers, and the Rules must provide for Trustees, a Secretary, a Treasurer and a Committee of Management. There must also be two Auditors or an approved Auditor. Other officers sometimes appointed include Managers, persons to sue or be sued on behalf of a society or branch, and Medical Officers, who must be fully registered medical practitioners, Chairman, Sick Visitors and so forth. Officers are commonly described by titles borrowed from free-masonry and other crafts.

A member under twenty-one years of age cannot be a member of the Committee, a Trustee, Manager or Treasurer.

2. *Abhoy Pado Bose v. Queen's Anglo-Sanskrit School, Lucknow*, 34 IC 263.
3. *Mathura Sadhu Sant Samaj v. The Official Assignee, Madras*, AIR 1951 Mad 875: (1951) MLJ 548.
4. *A. S. Krishnan v. M. Sundaram*, AIR 1941 Bom 312: 43 Bom LR 562.
5. *Ibid.*

A collector of a collecting society is incapable of being a member of the Committee or of holding any office therein, except that of superintending collector within a specified area.

**Appointment of officers**—The Rules of a registered society or branch must provide for the appointment of the officers. A list signed by the Secretary and every Trustee and other officer named in it is evidence, on registry of the society, that the named persons have been duly appointed. There is no statutory regulation as to the manner of appointment except that a Trustee must be appointed by resolution of a majority of members present and entitled to vote at a general meeting. No notice of any change of officers of a registered society or branch officer than a collecting society is required to be sent to the Registrar, excepting a notice of change of a Trustee, and, if the society appoints officers to sue or be sued other than its Trustees, notice of any change of such officers. Collecting societies are also required to give notice of change of Secretary and Committee men.

**Appointment and removal of Trustees**—Every registered society and branch must have one or more Trustees, and their appointment and removal must be provided for in the Rules. The Trustees must be appointed by a resolution of a majority of the members present at a general meeting of the society or branch and entitled by the Rules to vote. A corporation may be a Trustee.

A copy of the resolution, signed by the Trustee appointed and the Secretary of the society or branch, must be sent to the Registrar within fourteen days. In the case of a branch, the copy of the resolution must be sent through an officer appointed by the central body. Failure to send a copy is an offence, but does not, it seems, invalidate the appointment.

The same person cannot be Secretary or Treasurer of a registered society or branch and a Trustee of that society or branch.

**Appointment of Secretary and duties**—The Rules of a registered society or branch should state in whom the power to appoint and remove the Secretary is vested. A Secretary is an officer. He cannot also be a Trustee.

Among the duties of a Secretary of a registered society are signing applications for registration of amendments of Rules; notices of the establishment of new branch; certificates of expulsion or secession of branches; copies of special resolutions for registry and notices of change of registered office.

In the case of societies and branches, the Secretary signs notices of appointment of new Trustees; applications to record

Rules and amendments; applications to transfer stock (and makes a declaration verifying statement therein); and endorsed receipts for discharging mortgages. In the case of branches, the Branch Secretary signs the notice of change of registered office and applications to register amendments, or, if the application is signed by an officer of the society, he makes or gives the statutory declaration or information in support. The other duties of Secretaries are provided for in the Rules. There is no statutory requirement that a Secretary must be a member, and it would seem that a person under twenty-one years of age may be appointed Secretary if he does not serve on the Committee or act as a Manager or Treasurer.

**Auditors and Treasurers**—Auditors of societies are *prima facie* not officers but may be officers under the terms of the Rules.

The Rules of a registered society and branch must provide for the appointment and removal of a Treasurer. Trustees are ineligible for this office. A banking company cannot be appointed Treasurer and neither can a minor.

The responsibility of a Treasurer for moneys belonging to a society which he has received is that of a bailee, so that if, before paying them into the bank, he is robbed by *vis major*, his grantor would, it seems, not be liable.

**Committee of Management**—The Rules of a registered society and branch must provide for the appointment and removal of a Committee of Management. A member of that Committee is an officer. No collector of a collecting society may be a member, nor may a minor. The duties of a Committee of Management are, *inter alia*, to manage the society and to prosecute for fraud or misappropriation, and its consent to investments may be necessary.

The Committee has certain powers of determining who is entitled to moneys due from a society to a member who has died intestate.<sup>1</sup>

**2. Governing body defined**—See Note 4, under the Commentary of Section 2—*supra*.

**3. Position of governing body**—A society registered under the Act is a corporate body with a separate juristic personality which is distinct and separate from that of its members and the governing body. A registered society has a perpetual succession, and, therefore, it continues to exist and to function as such until its dissolution under the provisions of the Act. The members

1. Halsbury's Laws of England, 3rd Edn., Vol. 18, pp. 43, 44, 45, 46, 48, 49, 50.



as well as the governing body of the society are not always the same and fluctuate from time to time. Since a registered society is a juridical person but with no physical existence, it can exercise its powers and perform its functions only through its governing body which is entrusted with the management of the affairs of the society. The persons who constitute the governing body of a society or any other managing committee by whatever name it may be called are responsible for the management of the society. The property of the society, if not vested in the trustees, is vested in the governing body. The members of the governing body are the agents of the society and hence if they act fraudulently, they will be held liable for misconduct.<sup>2</sup>

**17. Registration of societies formed before Act**—Any company or society established for a literary, scientific or charitable purpose and registered under Act XLIII of 1850,<sup>1</sup> or any such society established and constituted previously to the passing of this Act but not registered under the said Act XLIII of 1850,<sup>1</sup> may at any time hereafter be registered as a society under this Act.

**“Assent required”**—Subject to the proviso that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present personally, or by proxy, at some general meeting convened for that purpose by the governing body.

In the case of a company or society registered under Act XLIII of 1850,<sup>2</sup> the directors shall be deemed to be such governing body.

In the case of a society not so registered, if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth.

2. *Ranger v. Great Western Rly.*, (1854) 5 HLC 85.

1. Repealed by Act X of 1866, *vide* Section 219 of Act X of 1866. [Now please see Companies Act VII of 1913 and the Companies Act I of 1956].

2. Repealed by Act X of 1866, *vide* Section 219 of Act X of 1866.

## SYNOPSIS

- |                            |                                                    |
|----------------------------|----------------------------------------------------|
| 1. State Amendments.       | 3. English law.                                    |
| 2. Modified law in States. | 4. Construction of reference of Act XLIII of 1850. |

**1. State Amendments.**—The amendments made by the amending Acts in the following States are given below :

### States Amendments

#### Bihar

Section 17 of the principal Act stands *substituted vide* Bihar Act No. 2 of 1960, as under :

“17. *Registration of society formed under other Act*—Any company or society established for a literary, scientific or charitable purpose and registered under the Indian Companies Act, 1913 (VII of 1913), or under the Companies Act, 1956 (I of 1956) and not registered under this Act may, at any time hereafter, be registered as a society under this Act :

Provided that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present there personally or by proxy, at some general meeting convened for the purpose by the governing body.

In case of a company or society registered under the Indian Companies Act, 1913 (VII of 1913) or the Companies Act, 1956 (I of 1956), the directors of the said company or society, as the case may be, shall be deemed to be such governing body.

In the case of a society not so registered, if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth.”

#### Gujarat

Same as that of Maharashtra. —*See* Guj. A. L. O., 1961 and Act XI of 1960, S. 83.

#### Maharashtra

“*Amendment of Section 17 of the XXI of 1860*—In Section 17 of the principal Act, for the words and figures ‘passing of this Act but not registered under the said Act XLIII of 1850’ the words and figures ‘commencement of this Act in the relevant part of the State but not registered under Act XLIII of 1850 or any law for registration of societies or companies in force immediately before such commencement, as the case may be,’ shall be *substituted*.”<sup>2</sup>

2. Section 4 of Mah Act No. LXXVI of 1958.

**2. Modified law in States**—In the following States modified provisions have been made in their respective State Acts which are as under :

### Mysore

*“Registration of societies formed before Act*—Any society established for a literary, scientific or charitable purpose and constituted previously to the passing of this Act, may at any time hereafter be registered as a society under this Act, subject to the proviso that no such society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present personally, or by proxy at some general meeting convened for that purpose by the governing body.

If no governing body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice to create for itself a governing body to act for the society thenceforth.”<sup>3</sup>

### Rajasthan

*“Registration of societies formed before Act and not registered*—(1) Any society established and constituted for any of the purposes specified in Section 1-B, and any society of the nature mentioned in Section 20 so established and constituted, previously to the passing of this Act and not registered under any law repealed by Section 21 may at any time hereafter be registered as a society under and in accordance with the provisions of this Act.

(2) In the case of any such society, if no governing body thereof shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create a governing body to act for the society thenceforth.”<sup>4</sup>

### 3. English Law—Purposes and history of legislation --

The purpose of friendly society legislation has been to encourage the promotion of thrift and the better management of friendly societies and the protection of their funds. Friendly society legislation in this country commenced at the end of the eighteenth century. Under the earliest Acts the Rules of the friendly societies were allowed by Justices of the Peace and enrolled at quarter sessions. Later a barrister was appointed to examine and certify Rules before their enrolment, and he, afterwards, was constituted the Registrar of Friendly Societies. Rules which had previously been enrolled with the Clerk of the Peace in each country were taken charge of by him. Thereafter, until 1875, Rules were certified by the Registrar. In that year the Registry of Friendly Societies was established, and since then all previously existing enrolled and certified friendly societies have been deemed to be registered. The main Acts at present in force governing friendly societies, other than collecting societies, are the Friendly Societies Act, 1896, as amended by the Friendly Societies Act, 1908, the

3. Section 18 of Mysore Act No. III of 1904.

4. Section 17 of Rajasthan Act No. XXVIII of 1958.



Friendly Societies Act, 1924, the Industrial Assurance and Friendly Societies Act, 1929, the Industrial Assurance and Friendly Societies Act, 1948 and the Friendly Societies Act, 1955. These Acts may be cited together as the Friendly Societies Acts, 1896 to 1955. So far as they apply to friendly societies which are not collecting societies, these Acts are to be construed as one. The Assurance Companies Acts, 1909 to 1946, do not apply to registered friendly societies other than collecting societies.

**Application of friendly societies legislation**—The enactments relating to friendly societies apply only to registered societies, except that the provisions imposing restrictions on insurances payable on the deaths of children under ten years of age and the provisions protecting the interests of persons serving in the reserve and auxiliary forces of the Crown apply both to registered and unregistered societies. Registration is voluntary except for collecting societies, and a class of society (called a "shop club" or "thrift fund") established for the benefit of workmen of certain employments compulsory membership of which is made a condition of employment.<sup>5</sup>

**4. Construction of reference of Act XLIII of 1850**—Act XLIII of 1850 was repealed by Act X of 1866 and again this latter Act was repealed and re-enacted by Act VII of 1913. The Act VII of 1913 was also repealed by the Indian Companies Act I of 1956. Thus, for construing the reference of repealed Acts one should take into account the situation in which the Act has been repealed. But, where the Act repealed has been re-enacted with or without modification, reference, according to Section 8 of the General Clauses Act, 1897, in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provisions so re-enacted.<sup>6</sup>

**18. Such societies to file memorandum, etc., with Registrar of Joint Stock Companies**—In order to any such society as is mentioned in the last preceding section obtaining registry under this Act, it shall be sufficient that the governing body file with the Registrar of Joint Stock Companies, [\* \* \*] a Memorandum showing the name of the society, the objects of the society and the names, addresses and occupations

5. Halsbury's Laws of England, 3rd Edn., Vol. 18, pp. 9, 10, 11, 12.

6. *State of Bihar v. G. N. Ojha*, AIR 1963 Pat 303.

of the governing body, together with a copy of the rules and regulations of the society certified as provided in Section 2 and a copy of the report of the proceedings of the general meeting at which the registration was resolved on.

### SYNOPSIS

- |                         |                                    |
|-------------------------|------------------------------------|
| 1. Legislative changes. | 3. Modified law in certain States. |
| 2. State amendments.    | 4. Scope.                          |

**1. Legislative changes**—The words and figures “under Act XIX of 1857” occurring in brackets marked [\* \* \*] were *repealed* by the Repealing Act, 1874 (XVII of 1874).

**2. State Amendments.**—The amendments made by the amending Acts in certain States are given as follows :

#### Andhra Pradesh

In its application to the State of Andhra, in Section 18, for the words “the Registrar of Joint Stock Companies”, *substitute* the words “the Inspector-General”. —President’s Act X of 1954, S. 3 (1-10-1954) (re-enacted by A. P. Act VI of 1956 with retrospective effect from 1-10-1954).

#### Assam : Manipur : Tripura

In its application to the State of Assam, in Section 18, for the words “Registrar of Joint Stock Companies”, *substitute* “Registrar of Societies”. —Assam Act VII of 1957, S. 2(ii) (17-7-1957) and G. S. Rs. 85 and 86 of 1960, *Gaz. of India*, 1960, Pt. II, S. 3(i), pp. 145, 146.

#### Bihar

In Section 18 of the principal Act, for the words “Registrar of Joint Stock Companies” the words “Inspector General of Registration” shall be *substituted*.<sup>1</sup>

#### Gujarat

Same as that of Maharashtra.—Guj. A. L. O., 1961 and Act XI of 1960, S. 83.

#### Maharashtra

“*Amendment of Section 18 of Act XXI of 1860*—In Section 18 of the principal Act, including the marginal note thereto, the words “of Joint Stock Companies” shall be *deleted*.”<sup>2</sup>

#### Orissa

In its application to the State of Orissa, in Section 18, for the words “Registrar of Joint Stock Companies”, *substitute* the words “Registrar of Societies”. —Orissa Act XXI of 1958, S. 3 (with effect from 1-1-1961).

#### Pondicherry

In its application to the Union territory of Pondicherry, in Section 18, for the words “Registrar of Joint Stock Companies”, *substitute* the word “Registrar of Companies”. —Pondi. Act IX of 1969, S. 6 (1-1-1970).

1. Section 6 of Bihar Act No. XIX of 1956.
2. Section 5 of Bombay Act No. LXXVI of 1958.

**Punjab : Haryana : Chandigarh : Delhi & Himachal Pradesh**

In its application to the State of Punjab, in Section 18 *omit* the words "of Joint Stock Companies." —Punj. Act XXXI of 1957, S. 3 and G. S. Rs. 83 and 84 of 1960, *Gaz. of India*, Pt. III, S. 3(i), pp. 144, 145.

**Tamil Nadu**

In its application to the State of Tamil Nadu, the amendment made in Section 18 is the same as that of Andhra Pradesh. —T. N. Act XXIV of 1954, S. 2(iv) (1-9-1954).

**Uttar Pradesh**

*"Amendment of Sections 1, 4 and 18 of Act XXI of 1860—In Sections 1, 4 and 18 of the Societies Registration Act, 1860 (hereinafter called "the principal Act"), for the words "Registrar of Joint Stock Companies" wherever occurring the word "Registrar" shall be substituted."*<sup>3</sup>

**3. Modified law in certain States.**—In the following States modified provisions have been made in their respective State Acts which are as under :

**Mysore**

*"18. Such Societies to file memorandum, etc., with Registrar of Joint Stock Companies—In order to any such society as is mentioned in the last preceding section obtaining registry under this Act, it shall be sufficient that the governing body file with Registrar of Joint Stock Companies a memorandum showing the name of the society, the objects of the society, and the names, addresses and occupations of the governing body together with a copy of the rules and regulations of the society certified as provided in Section 3 and a copy of the report of the proceedings of the general meeting at which the registration was resolved on."*<sup>4</sup>

**Rajasthan**

*"Power of Registrar to refuse registration in certain cases—*

(1) The Registrar shall refuse to register,—

- (a) a society under Section 3, or
- (b) the change of names made under Section 12-A, or
- (c) a society under Section 17,

if the proposed name of such society is identical with that by which any other existing society has been registered or in the opinion of the Registrar so nearly resembles such other name as to be likely to deceive the public or the members of either society.

(2) The provisions of sub-section (1) shall also apply to societies referred to in sub-section (2) of Section 21 and to changes of name referred to in sub-section (3) of that section, under the laws repealed by sub-section (1) of Section 21, any two or more societies have been registered with identical names or with names which, in the opinion of the Registrar, so nearly resembles each other as to be likely to deceive the public or the members of such societies, the society which was so registered first of all shall continue to function under its original name and other such societies shall change, and may be required by the Registrar to change their names

3. Section 2 of U. P. Act No. XXV of 1958.

4. Section 19 of Mysore Act No. III of 1904.



suitably within a period of six months from the commencement of this Act.”<sup>5</sup>

Section 21 of Rajasthan Act No. XXVIII of 1958, the reference of which has been made in the above quoted section, reads :

“*Repeal and Savings*—(1) The Societies Registration Act, 1860 (Central Act XXI of 1860), as adapted to the Pre-Reorganisation State of Rajasthan by means of Rajasthan Ordinance I-B of 1950 and all laws relating to the registration of societies which may be in force in any part of the State shall stand repealed upon the commencement of this Act.

(2) All societies registered under any of the laws mentioned in sub-section (1) shall, if they may be registered under this Act, be deemed to have been registered thereunder.

(3) All changes made in the names of such societies as are referred to in sub-section (2), previously to the commencement of this Act, shall be deemed to have been made under this Act :

Provided that, if such change shall not have been registered or a certificate in receipt thereof shall not have been issued in accordance with Section 12-B, such registration shall be made and certificate shall be issued under that section on application being made to the Registrar in that behalf within three months from the commencement of this Act.

(4) All other actions taken or orders given under the law mentioned in sub-section (1) shall, unless repugnant to, or inconsistent with, the provisions of this Act, be deemed to have been taken or given, as the case may be, under this Act.

(5) If, in the case of any society deemed to have been registered under this Act, no action of the nature specified in Section 4-A, shall have been taken previously to the commencement of this Act, such action shall first be taken within three months after such commencement and thereafter in accordance with that section and for any failure to do so the person responsible shall be liable under Section 4-B.”

**4. Scope.**—The preceding Section 17 and the present Section 18 of the Act make specific provisions as to how the pre-Act unregistered societies are to be registered. A perusal of the relevant provisions makes it clear that no special force is attached to the rules and regulations made by the society merely on the ground that they have been made before its registration and have been duly filed with the Registrar at the time of registration of the society.<sup>6</sup>

## Section 18-A

### Pondicherry

In its application to the Union territory of Pondicherry, after Section 18, insert the following new section, namely—

“*18-A. Power of Registrar to refuse registration in certain cases*—(1) The Registrar shall refuse to register—

(a) a society under Section 3,

5. Section 18 of Rajasthan Act No. XXVIII of 1958.

6. *Zardozi Union, Lucknow v. Bashir Khan*, AIR 1925 Oudh 1072 : 80 IC 556.

(b) the change of names made under Section 12-A, or

(c) a society under Section 17,

if the proposed name and such society is undesirable or identical with that by which any other existing society has been registered or in the opinion of the Registrar so nearly resembles such other name as to be likely to deceive the public or the members of either party.

(2) If any two or more societies which have been registered with identical names or with names which, in the opinion of the Registrar, so nearly resemble each other as to be likely to deceive the public or the members of such societies, the society which was so registered first of all shall continue to function under its original name and other such societies shall change and may be required by the Registrar to change their names suitably within a period of six months from the commencement of this Act." —Pondi. Act IX of 1969, S. 7 (1-1-1970).

## 19. Inspection of documents, certified copies.

—Any person may inspect all documents filed with the Registrar under this Act on payment of a fee of one rupee for each inspection; and any person who requires a copy or extract of any document or any part of any document, to be certified by the Registrar, on payment of two annas for every hundred words of such copy or extract; and such certified copy shall be *prima facie* evidence of the matters therein contained in all legal proceedings whatever.

### SYNOPSIS

- |                                                      |                                                                                      |
|------------------------------------------------------|--------------------------------------------------------------------------------------|
| 1. State Amendments.                                 | 5. Proof of documents.                                                               |
| 2. Modified law in certain States.                   | 6. Right to inspect documents.                                                       |
| 3. English law.                                      | 7. Remedy of the aggrieved person where inspection or copy has been wrongly refused. |
| 4. Presumption and proof of registration of society. |                                                                                      |

**1. State Amendments**—The amendments made by the amending Acts in certain States are as under:

#### Andhra Pradesh

In its application to the State of Andhra, in Section 19 for the words "the Registrar", substitute the words "the Inspector-General". —President's Act X of 1954, S. 3 (1-10-1954) (as re-enacted by A. P. Act VI of 1956, S. 4 and Sch. III, w. e. f. 1-10-1954).

#### Assam : Manipur : Tripura :

"Amendment of Section 19 of the Principal Act—Substitute the words 'fifteen naya paisa' for the words 'two annas' in between the words "payment of" and "for every hundred words."¹

1. Section 2 of Assam Act No. XI of 1958.

**Bihar**

*“Amendment of Section 19 of Act XXI of 1860—In Section 19 of the said Act, for the word ‘Registrar’ wherever it occurs, the words ‘Inspector General of Registration’ shall be substituted.”*

**Gujarat**

Same as that of Maharashtra (i). —Bom. Act LXXVI of 1958; Guj. A. L. O., 1961 and Act XI of 1960, S. 83.

**Maharashtra**

In its application to the whole of the State of Maharashtra, in Section 19,—

(i) for the words “and any person may require a copy or extract of any document or any part of any document to be certified by the registrar, on payment of two annas for every hundred words of such copy or extract”, *substitute* the words “or may require the Registrar to give him a certified copy or extract of any document or any part thereof on payment of such fee as the State Government or any officer authorised by it may by notification in the Official Gazette fix in that behalf.” —Bom. Act LXXVI of 1958, S. 6 (7-10-1958); and

(ii) for the words “any person may inspect”, *substitute* the words “Except as otherwise provided by Section 4-A, any person may inspect.” —Maha. Act XI of 1968, S. 8 (1-10-1968).

**Orissa**

In its application to the State of Orissa, in Section 19 for the word “Registrar” *substitute* the words “Registrar of Societies”. —Orissa Act XXI of 1958, S. 3 (w. e. f. 1-1-1961).

**Pondicherry**

In its application to the Union territory of Pondicherry, in Section 19, for the words “two annas” *substitute* the words “fifteen paise.” —Pondi. Act IX of 1969, S. 8 (1-1-1970).

**Punjab : Haryana : Chandigarh : Delhi and Himachal Pradesh**

In its application to the Union territory of Pondicherry, in Section 19, for the words “two annas” *substitute* the words “twenty-five naye paise.” —Punj. Act XIV of 1961, S. 2; Act XXXI of 1966: G. S. Rs. 83 and 84, Gazette of India, 1960, Pt. II, S. 3(i), pp. 144, 145.

**Tamil Nadu**

In its application to the State of Madras, in Section 19—

(i) the amendment made is the same as that of Andhra Pradesh. —Mad. Act XXIV of 1954, S. 2(iii) (1-9-1954).

(ii) for the words “two annas for every hundred words” *substitute* the words “twenty five naye paise for every two hundred words or part thereof”. —T. N. Act IX of 1960, S. 2 and Sch. (w.e.f. 1-4-1961).

**2. Modified law in certain States**—In the following States modified provisions have been made in their respective State Acts which are as under :

2. Section 7 of Bihar Act No. XIX of 1956.



**Andhra Pradesh**

*"Inspection of documents: Their copies—*Any person may inspect documents, pertaining to a society registered under this Act, filed in the office of the Registrar of the Joint Stock Companies on payment of a fee of one rupee or obtain certified copies thereof on payment of the fee prescribed by the said office. Such certified copy shall be *prima facie* evidence of the matters therein contained in all judicial proceedings."<sup>3</sup>

**Maharashtra**

*"19. Inspection of documents, certified copies—*Except as otherwise provided by Section 4-A, any person may inspect all documents filed with the Registrar under this Act on payment of a fee of one rupee for each inspection; or may require the Registrar to give him a certified copy or extract of any document or any part thereof on payment of such fee as the State Government or any officer authorised by it may, by notification in the Official Gazette, fix in that behalf and such certified copy shall be *prima facie* evidence of the matters therein contained in all legal proceedings whatever."<sup>3a</sup>

**Mysore**

*"Inspection of documents—*Any person may inspect all documents filed with the Registrar of Joint Stock Companies under this Act on payment of a fee of one rupee for each inspection, and any person may require a copy or extract of any document or any part of any document, to be certified by the Registrar, on payment of two annas for every hundred words of such copy or extract, and such certified copy shall be *prima facie* evidence of the matters therein contained in all legal proceedings whatever."<sup>4</sup>

**Rajasthan**

*"Inspection of documents and certified copies thereof—*Any person may inspect all documents filed with the Registrar under this Act on payment of a fee of one rupee for each inspection and any person may require a copy or extract of any document or part of any document to be certified by the Registrar, on payment of thirteen naya paisa for every hundred words of such copy or extract and such certified copy shall be *prima facie* evidence of the matters therein contained in all proceedings whatever."<sup>5</sup>

**3. English law—Statutory liability to keep accounts.—**The Rules of every registered society and branch must provide for the keeping of accounts and their audit once a year at least, and, in the case of every friendly and cattle insurance society, for separate accounts being kept of moneys received or paid on account of every particular fund or benefit assured for which a separate table of contributions has been adopted and of the expenses of management, and of all contributions on account thereof.

**Conduct of audit—**The audit of the accounts of a registered society (not being a collecting society) or branch must be carried out once a year by one of the approved Auditors appointed by the Treasury except in the case of a registered society or branch which on 31st December, 1949 and on 31st December of each succeeding year, including 31st December in the year preceding

3. Section 15 of AP Act No. 1 of 1350 F.

3a. Section 19 as amended by Maharashtra Act Nos. 76 of 1958 and 11 of 1968.

4. Section 20 of Mysore Act No. III of 1904.

5. Section 19 of Rajasthan Act No. XXVIII of 1958.

that in which the audit is being undertaken, had less than 500 members and assets totalling less than £5,000. Such a society or branch has the option of having its accounts audited either by an approved Auditor or by two or more persons appointed as its Rules provide, unless the Chief Registrar directs it to have its accounts for any year audited by an approved Auditor.

The Chief Registrar, subject to the approval of the Treasurer signified by statutory instrument, may make regulations reducing the number of members and total of assets below which societies and branches are entitled to exercise the option, and ultimately rendering the option no longer exercisable by any society or branch.

The accounts of a collecting society must be audited by an approved Auditor. Auditors have the right of access to all books and accounts, and they are required to examine the annual return and verify it with the accounts and vouchers relating thereto, and to sign the return as found by them to be correct, duly vouched, and in accordance with law, or specially report to the society or branch in what respects they find it incorrect, unvouched, or not in accordance with law. Accounts duly audited and signed may be impeached on grounds of fraud but not of honest error.

**Annual returns**—Every registered society and branch must send to the Registrar once a year, not later than 31st May, a return of the receipts and expenditure, funds and effects of the society or branch as audited. The annual return must show separately the expenditure in respect of the several objects of the society or branch, and be made out to 31st December last, and state whether the audit has been conducted by an approved Auditor and by whom. A copy of any special report of the Auditors must be sent with the return. In the case of a branch, the annual return must be sent to the Registrar through an officer appointed for that purpose by the parent society.

**Balance-sheet**—Every registered society and branch must keep a copy of the last annual balance-sheet, with any special report of the Auditors, always hung up in conspicuous place in its registered office. The balance-sheet of a collecting society must also be kept open for inspection at all business offices of the society for seven days next preceding the meeting at which it is to be presented, and must be delivered and sent to every member or person interested in the funds on demand.

**Right of inspection of books**—Any member or person having an interest in the funds of a registered society or branch may inspect the books at all reasonable hours at the registered office of the society or branch or at any place where the books are kept and may take copies of the books; but only officers, or



members or persons interested who are specially authorised by a resolution of the society or branch, are entitled to inspect the loan account of any other member without his written consent.<sup>6</sup>

#### 4. Presumption and proof of registration of society—

Once the registration of a society has been proved, it can safely be assumed, relying on the presumption which can be raised under Section 114 of the Evidence Act, that the necessary formalities which were required to be observed before a society could be registered by the Registrar had *prima facie* been observed and at least on the face of it the Memorandum of Association purported to have been signed by seven different persons.

That is, however, a rebuttable presumption, and it is always open to a party to plead and to lead evidence to show that what purported to have been done was not, in fact, done and the Memorandum of Association did not, in fact, contain the signatures of seven more persons. For example, it could be said that although the Memorandum of Association purported to have been signed by seven persons, one of them had, in fact, not signed the same and his signatures on the Memorandum of Association had been forged. Once such plea had been raised and some evidence led in support of that plea, no presumption could be raised under Section 3 of the Societies Registration Act, read with Section 114 of the Indian Evidence Act, that any particular person had signed the Memorandum of Association, Section 19 of the Act however, provides that where a certified copy of a document filed with the Registrar had been obtained, "such certified copy shall be *prima facie* evidence of the matters therein contained in all legal proceedings whatever". Where a certified copy of the Memorandum of Association has been filed, a presumption arises that the persons whose signatures appeared on that Memorandum had signed the same, and unless that presumption was rebutted by the satisfactory evidence, even the vague denial of one of the signatories to any such Memorandum could hardly be of any avail.

In the case of *Sunder Singh Mallah Singh v. Sanatan Dharam High School Trust, Indaura*,<sup>7</sup> a definite plea had been raised on behalf of the defendant that the plaintiff committee was not a duly registered body and an issue was framed in the following words:

"Whether the plaintiff committee is not a duly registered body."

One of the signatories to the Memorandum of Association (named Kharak Singh), had stated during the course of cross-examination that:

6. Halsbury's Laws of England, 3rd Edn., Vol. 18, pp. 92, 93, 94.

7. AIR 1938 PC 73.



"I did not see the original Articles of Association (nor sign them) sent to Registrar."

Commenting on that statement made by Kharak Singh, one of the signatories, their Lordships of the Privy Council observed :

"Whatever one might think probable, it is left uncertain whether this witness was referring to the Memorandum as the Articles of Association; counsel were unable to inform their Lordships definitely what was the reason of the brackets round the words 'nor sign them'. If the defendants really desired to displace the presumption in this respect, it was clearly their duty to seek to recover the original memorandum and to put the signatures thereon to the witnesses. Their Lordships are, therefore, of opinion that the Association was duly registered and, therefore, *locus standi* to maintain the suit."

It was in this context that it was mentioned earlier in the body of the judgment that :

"Their Lordships are of the opinion that presumption arises, not on the certificate of registration granted by the Registrar under Section 3, but on the copies of the Rules and Regulations and Memorandum certified under Section 19, which constitutes them *prima facie* evidence of the matters therein contained."

The presumption referred to is regarding the signature of Kharak Singh on the Memorandum of Association and not regarding the valid registration of the society.

But where valid registration is not questioned in the pleadings and at the stage of evidence, it is not incumbent on the plaintiff to file a certified copy of the Memorandum of Association. Inasmuch as the registration of the society is not specifically admitted, all that is required is to file a copy of the certificate of registration. It is only a copy of the certificate of registration which can prove the registration (as distinguished from valid registration) of the society. In cases where the defendants are not even aware whether or not the Memorandum of Association had been signed by seven or more persons, it is not necessary to prove who were the persons who had actually signed the Memorandum of Association. Nor was it necessary to file a copy of the Memorandum of Association.<sup>8</sup>

<sup>8</sup>. *Shanti Sarup v. R. S. Sabha*, AIR 1969 All 248 at pp. 255, 256.

**5. Proof of documents.**—All documents filed with the Registering Authority by a society or a company are public records of documents kept in the office of State Government within the meaning of Section 75 of the Indian Evidence Act (I of 1872). Hence, a certified copy of such a document is admissible in evidence.<sup>9</sup> It should be noted that the copies thus given are admissible for the purpose of proving the contents of original documents.<sup>10</sup> However, their execution should be proved in the ordinary way like other private documents.<sup>11</sup> The certified copies of the rules and regulations and Memorandum of a society constitute *prima facie* evidence of the matters therein contained and give rise to a presumption that the society is duly registered.<sup>12</sup>

**6. Right to inspect documents.**—It is no doubt true that the fact of a document being a public document and the fact of its being open to inspection are not co-extensive.<sup>13</sup> The question whether any person has a right to inspect a certain document depends rather on the special enactment and there is no general enactment regulating the right of inspection of public documents.<sup>14</sup> The Societies Registration Act, however, allows inspection of all documents filed with the Registrar on payment of a prescribed fee.

**7. Remedy of the aggrieved person where inspection copy has been wrongly refused.**—The statutes which specially confer the right of inspection of documents do not provide any remedy to which recourse may be had when inspection or certified copy is refused. However, an aggrieved person may in a proper case get a *writ of mandamus* from the High Court under Section 45 of the Specific Relief Act.<sup>15</sup>

**20. To what societies Act applies.**—The following societies may be registered under this Act:

Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature or the fine arts, for instruction, the diffusion of useful knowledge (the diffusion of political education),

9. In the matter of *Tarit Kanti Biswas*, 45 IC 338.

10. Section 57(5), Registration Act.

11. *Gopaldas v. Sri Thakurjee*, AIR 1943 PC 83.

12. *In re Sunder Singh*, 172 IC 993 : 138 ALJ 194 : 40 PLR 247.

13. 27 Woodroffe, Ev. 9th Ed., p. 565.

14. *Chandi Charan Dhar v. Boistob Charan Dhar*, 3 IC 284.

15. *E. v. Dinanath Roy*, ILR 8 Cal 166.

the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs.

### SYNOPSIS

- |                                    |                            |
|------------------------------------|----------------------------|
| 1. Legislative Changes.            | 4. English Law.            |
| 2. State Amendment.                | 5. Application of the Act. |
| 3. Modified law in certain States. | 6. Purpose—Meaning of.     |

**1. Legislative Changes**—The words “the diffusion of political education” occurring in the section within brackets have been inserted by Amendment Act, XXII of 1927. Before the enactment of this Amendment Act there was no provision in law enabling a political institution to enjoy the status of legal entity apart from the members constituting the same. The Statement of Objects and Reasons for the Bill which was passed into this Amendment Act runs: “The amendment is intended to extend the scope of the Societies Registration Act, 1860, by making it applicable to certain purposes which were perhaps inadvertently omitted from Section 20. The Act was enacted 60 years back and the march of times has necessitated the inclusion of several purposes which could not have been contemplated at that stage.”

**2. State Amendments**—The amendments made by the amending Acts in the following States are given below:

#### Bihar

In Section 20 of the principal Act, after the words “science, literature”, the words “industry agriculture” shall be *inserted*, vide Bihar Act No. 2 of 1960.

#### Maharashtra

**“Amendment of Section 20 of Act XXI of 1860**—Section 20 of the principal Act shall be *re-numbered* as sub-section (1) of that section and after sub-section (1) so *re-numbered* the following sub-section shall be *added*, namely—

“(2) Notwithstanding anything contained in sub-section (1), any society registered under the Public Societies Registration Act (Hyderabad I of 1350 F) for any public or religious purpose and operating in the Hyderabad area of the State of Bombay at the commencement of the Societies Registration (Bombay Extension and Amendment) Act, 1958 (Bombay Act LXXXVI of 1958), shall be deemed to be and continue to be registered under this Act.”

#### Pondicherry

In its application to the Union territory of Pondicherry, in Section 20, after the words “instruments or designs”, words “the dissemination of social

1. Section 7 of Bombay Act No. LXXXVI of 1958.



economic education ; promotion of the interest or welfare of the public or a section of the public or of non-trading associations with objects confined to the Union territory and any other objects as may be notified by the Government as being beneficial to the public or to a section of the public" shall be inserted. —Pondicherry Act IX of 1969, S. 9 (1-1-1970).

"22. *Procedure.*—(1) No Court inferior to that of a Magistrate of the First Class shall try an offence punishable under this Act.

(2) No Court shall take cognizance of an offence punishable under this Act except upon complaint made by the Registrar of Societies or any other person, authorised in writing by him, in this behalf." —Assam Acts XI of 1952, S. 3 (15-10-1952), VII of 1957, S. 2(ii) (17-7-1957) : G. S. Rr. 83 and 84 of 1960, *Gazette of India*, 1960, Pt. II, S. 3(i), pp. 144, 145.

**3. Modified law in certain States.**—In the following States modified provisions have been made in their respective State Acts which are as follows :

#### Mysore

**"To what societies Act applies**—The following societies may be registered under this Act :

Charitable societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collection of natural history, mechanical and philosophical inventions, instruments, or designs."<sup>2</sup>

#### Rajasthan

**Societies that may be registered under the Act**—The following societies may be registered under this Act, namely,—

"Societies established for charitable purposes ; military orphans funds societies established for the promotion of literature, science or the fine arts ; societies established for instruction or the diffusion of useful knowledge or political education ; societies established for the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public or public museums and galleries of painting and other works of art, societies established for collections of natural history and for mechanical and philosophical inventions, instruments or designs."<sup>3</sup>

**4. English Law—Purposes of a registered friendly society**—Of the six classes of societies which are capable of registration under the Friendly Societies Act, 1896, the most important consists of friendly societies. Societies capable of being registered as friendly societies are societies formed for the purpose of providing, by voluntary subscriptions of the members thereof, with or without the aid of donations, for any one or more of the following purposes :

(1) The relief or maintenance of the members, their husbands, wives, children (including adopted children,

2. Section 21 of Mysore Act No. III of 1904.

3. Section 20 of Rajasthan Act No. XXVIII of 1958.

fathers, mothers, brothers or sisters, nephews or nieces, or wards being orphans, during sickness or other infirmity, whether bodily or mental, in old age) (meaning any age after fifty) or in widowhood, or for the relief or maintenance during minority of the orphan children of members ;

- (2) Insuring money to be paid on the birth of a member's child, or on the death of a member, or of the husband or wife of a member, or, where the life insured is at the time of the proposal ordinarily resident in the United Kingdom or the Isle of Man, on the death of a parent (including a step parent or parent by adoption or grand-parent of a member, or, so far as there is still any power to insure for funeral expenses, for the funeral expenses of the husband, wife or child of a member or the widow of a deceased member, or, as respects persons of the Jewish persuasion), for the payment of a sum of money during the period of confined mourning ;
- (3) The relief or maintenance of the members when out of employment, or when in distressed circumstances, or in case of shipwreck or loss or damage of or to boats or nets ;
- (4) The endowment of members or nominees at any age or on marriage ;
- (5) Insuring money to be paid to the member on the duration for a specified period of the life of the member or of the husband or wife of the member, either with or without provision for the payment of money in the event of his or her death before the expiration of that period ;
- (6) The insurance against fire to any amount not exceeding £15 of the tools or implements of the trade or calling of the members ; or
- (7) The guaranteeing of the performance of their duties by officers and servants of the society or any branch thereof.

**Other societies which may be registered**—The five classes of societies, other than friendly societies, which may also be registered are (1) cattle insurance societies, for the purpose of insurance to any amount against loss of neat cattle, sheep, lambs, swine, horses and other animals by death from disease or otherwise ; (2) benevolent societies, for any benevolent or charitable

purpose; (3) working men's clubs, for purposes of social intercourse, mutual helpfulness, mental and moral improvement and rational recreation; (4) old people's home societies, for the purpose of providing homes for the members and others in old age (which means any age after fifty) and (5) societies specially authorised by the Treasury to be registered for any purpose, and to which some or all of the provisions of the Friendly Societies Act, 1896, are extended by the authority.

Registration under the Companies Act, 1948, is not necessary in the case of a specially authorised society.

**Registry of dividing societies**—Dividing societies, other than benevolent societies or working men's clubs, are not disentitled to be registered, if the Rules of the society contain distinct provision for meeting all claims upon the society existing at the time of division before the division takes place.<sup>4</sup>

**5. Application of the Act**—The Societies Registration Act (XXI of 1860), is applicable to various societies as detailed in Section 20. The question as to whether a religious society, the object of which is to obtain possession of the mosque property or other endowed property or to manage it for the benefit of a public mosque is registrable under the Act, has been answered in the affirmative.<sup>5</sup> However, a society registrable under this Act cannot become a partnership.<sup>6</sup> It is remarkable to note that it is incorrect to say that a society is not registrable under this Act because some of the bye-laws framed by it before its registration are inconsistent with the provisions of the Act.<sup>7</sup>

Where a society is formed for certain purposes which are primarily charitable, the fact that some of the purposes are not strictly charitable but religious do not render the society unregistrable under this Act, as for instance, a society formed for the purpose of improvement of Islamic education and rendering possible pecuniary help to the poor *musaffars* and *alim* and *ulema*, is registrable under this Act.<sup>8</sup>

With regard to charitable corporation Halsbury observed that as a charitable corporation exists solely for the accomplishment of charitable purposes, it is necessarily a trustee of its corporate property, whether the beneficiaries are its members or not. Hence like other trustees, whether charitable or otherwise, a charitable

4. Halsbury's Laws of England, 3rd Edn., Vol. 18, at pp. 12, 13, 17, 18, 19.

5. *Anjuman-i-Islamia of Mathura v. Nasiruddin*, 3 ALJ 124.

6. *In re State of Madras*, AIR 1958 Mad 394.

7. *Radhaswami Satsang Sabha v. Tarachand*, AIR 1939 All 557.

8. *Khoji Mohammad Hussain Saheb v. Masjiday Mahmood Jamait Managing Committee*, AIR 1940 Mad 167.



corporation is also subject to the jurisdiction of the Court as a trustee.<sup>9</sup>

**6. Purpose—Meaning of**—This word has not been defined in the Act. Section 1 of the Act, however uses the word 'purpose' and provides that any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in Section 20 of this Act, may, by subscribing their names to a Memorandum of Association, and filing the same with the Registrar of Joint Stock Companies, form themselves into a society under this Act. Here the word 'purpose' has been used in a very wide sense. If a literary society is established to promote literature it is founded for a literary purpose. Similarly if a scientific or charitable society is founded, it is established for scientific or charitable purpose. 'Purpose' has been used here in the sense of the main object. It has got nothing to do with its activities. The society may draw out a chart of its activities and prepare a programme for its working but that would not be the 'purpose' contemplated by the Act. Section 20 of the Act would also show that the word 'purpose' used therein has been used in a wide or comprehensive sense, that is, in the sense of the main object or the central aim of the society as distinguished from its detailed activities which will naturally be directed towards the attainment of that object. If a society is founded for purposes of promotion of literature, it may, in its rules, provide for variety of activities; as for example, for giving scholarships to deserving students, having a press and a publicity department, having an organisational wing, or for holding essay competitions, or awarding prizes for best books, or for holding annual sessions and conferences or for popularising Hindi language in foreign countries and so on and so forth. These are all the activities or the programme of the society and should not be confused with its purpose. Purpose means the fundamental principles upon which the association was formed and the trust created.<sup>10</sup>

In the Oxford Shorter Dictionary the word 'purpose' has been given the following meaning :

"The object which one has in view ; intention, resolution, determination ; the object for which anything is done or made, or for which it exists ; end, aim."

In Ramanatha Iyer's Law Lexicon it has been stated :

"The word purpose means that which a person sets before himself as an object to be reached or accomplished ; the aim

9. Halsbury, Vol. IV, 557.

10. See *Milligan v. Mitchell*, (1837) 40 ER 852.

or end to which the view is directed in any plan, manner, or execution; end or the view itself, design, intention.” (See page 1053).<sup>11</sup>

## Section 21

### States Amendments

#### Assam : Manipur : Tripura :

A new Section 21 has been *added* to the principal Act, *vide* Assam Act No. 11 of 1952, as under :

“21. *Penalties.*—(1) If the President, Secretary or any other person authorised in this behalf by a resolution of the governing body of the society fails to comply with the provisions of Section 4, he shall, on conviction, be punishable with fine which may extend to five hundred rupees and in case of a continuing breach, shall also be punishable with fine not exceeding fifty rupees for each day during the period the breach continues after first conviction for such offence.

(2) If any person wilfully makes or causes to be made any false entry in, or any omission from, the list required by Section 4, or in or from any statement of copy of rules or of alterations in rules sent to the Registrar of Joint Stock Companies under Section 4-A, he shall on conviction, be punishable with fine which may extend to two thousand rupees.

#### Bihar

A new Section 21 has been *added* to the principal Act, *vide* Bihar Act 4 of 1951, as under :

“21. *Penalty for non-compliance of Section 4 or making a false entry*—(1) If the President, Secretary or any person authorised in this behalf by a resolution of the governing body of the society fails to comply with the provisions of Section 4, he shall be punished with fine which may extend to five hundred rupees and to a further fine not exceeding fifty rupees for each day during which the default is continued after conviction for such offence.

(2) If any person wilfully makes or causes to be made any false entry in, or any omission from, the list required by Section 4, or in or from any statement or copy of rules or of alterations in rules sent to the Inspector General of Registration under Section 4-A, he shall be punished with fine which may extend to two thousand rupees.

#### Gujarat

In its application to the State of Gujarat—

(1) Section 21 is the same as in Maharashtra (i). —Act XI of 1960, S. 83.

#### Punjab

After Section 20 of the said Act, the following new section shall be *inserted*, namely,—

“21. *Cognizance of offences*—No Court inferior to that of a Magistrate of the first class shall try any offence under this Act, nor shall cognizance of any such offence be taken except on a complaint in

11. *Ram Charan v. Shridhar*, AIR 1962 All 610 at 614, *reversing* AIR 1959 All 598.

writing by the Registrar or any person authorised by him in writing in this behalf.”<sup>12</sup>

### Uttar Pradesh

“*Addition of Section 21 in Act XXI of 1860*—After Section 20 of the principal Act, the following shall be added as new Section 21 :

“21. In this Act the word ‘Registrar’ means any person appointed in this behalf by the State Government by notification in the Official Gazette to exercise the powers and perform the duties of a Registrar under this Act or the rules made thereunder.”<sup>13</sup>

## Section 22

### States Amendments

#### Assam : Manipur : Tripura :

A new Section 22 has been added to the principal Act, *vide* Assam Act No. XI of 1952 as under :

23. *Trial of offences*.—No Court inferior to that of a Magistrate of the first class shall try any offence under this Act.” —Bih. Acts IV of 1951, S. 3 (7-3-1951) ; XIX of 1956, S. 8 (w. e. f. 21-12-1955).

### Gujarat

A new Section 22 has been added to the principal Act, *vide* Gujarat Act No. 14 of 1965, as under :

“22. *Penalties*—(1) If the president, secretary or any other person authorised in this behalf by a resolution of the governing body of the society fails to comply with the provisions of Section 4, he shall, on conviction, be punished with fine which may extend to five hundred rupees and in the case of a continuing breach, shall also be punished with fine not exceeding fifty rupees for each day, during the period the breach continues after first conviction for such offence.

(2) If any person wilfully makes or causes to be made any false entry in, or any omission from the list required by Section 4, or in or from any statement or copy of rules or alterations in rule sent to the Registrar under Section 4-A, he shall, on conviction, be punished with fine which may extend to two thousand rupees.”

### Uttar Pradesh

“22. *Procedure*—(1) No Court inferior to that of a Magistrate of the first class shall try an offence punishable under this Act.

(2) No Court shall take cognizance of an offence punishable under this Act except upon complaint made by the Registrar of Joint Stock Companies or any other person, authorised in writing by him, in this behalf.”<sup>14</sup>

### Maharashtra

A new Section 22 has been added to the Principal Act, *vide* Maharashtra Act No. XI of 1968 as under :

“22. *Rules*—(1) The State Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

12. Section 5 of Punjab Act No. VI of 1949.

13. Section 3 of U. P. Act No. XXV of 1958.

14. Section 3 of Assam Act No. XI of 1952.



(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree, that the rule should not be made, the rule shall from the date of publication of a notification in the Official Gazette, of such decision have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of any thing previously done or omitted to be done under that rule."

## Section 23

### States Amendments

#### Bihar

A new Section 23 has been added to the principal Act, *vide* Bihar Act No. 2 of 1960, as amended by Bihar Act No. 12 of 1963, as under:

"23. *Cancellation of registration in certain cases*—(1) Notwithstanding anything contained in this Act, the Inspector-General of Registration may, by order in writing, cancel the registration of any society registered under this Act whose office has ceased to be in the State of Bihar by reason of the reorganisation of States or change of the office from the State of Bihar to another State or whose activities are subversive to the objects of the society:

Provided that the Inspector-General of Registration shall, before passing an order, make such inquiry as he considers necessary:

Provided further that no order of cancellation of registration of any society on the ground of the activities of the society being subversive to the objects of the society shall be passed until the society has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to it.

(2) An appeal against an order made under sub-section (1) may be preferred in such manner, within such time and to such authority as may be prescribed and such authority shall consider and dispose of such appeals in the prescribed manner.

(3) The decision of the appellate authority under sub-section (2) shall be final.

## Section 24

### State Amendments

#### Bihar

A new Section 24 has been added to the principal Act, *vide* Bihar Act No. 2 of 1960, as modified by Bihar Act No. 12 of 1963, as under:

"24. *Power of the State Government to make rules*—(1) The State Government may, after previous publication, make rules not inconsistent with this Act for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make rules:

- (a) prescribing the form of the Register of Societies, and the mode in which entries relating to registration are to be made therein and the mode in which such entries are to be amended or notes made therein;

- (b) regulating the filing of documents received by the Inspector-General of Registration;
- (c) prescribing the authority before whom and the time within which an appeal shall be preferred under sub-section (2) of Section 23 and the manner in which such appeals shall be considered and disposed of;
- (d) prescribing conditions for the inspection of original documents;
- (e) regulating grant of copies of document; and
- (f) providing for any other matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the State Government necessary for giving effect to the purposes of this Act.

(3) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule".

## THE WEST BENGAL SOCIETIES REGISTRATION ACT, 1961

*[Passed by the West Bengal Legislature]*

[Assent of the President was first published in the Calcutta Gazette, Extraordinary, of the 5th December, 1961]

*[5th December, 1961.]*

*An Act to provide for the registration of literary, cultural, scientific, political, charitable, religious and certain other kinds of societies and for matters connected therewith.*

It is hereby enacted in the Twelfth Year of the Republic of India, by the Legislature of West Bengal, as follows :

**1. Short title, extent and commencement—**(1) This Act may be called the West Bengal Societies Registration Act, 1961.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

**2. Interpretation—**In this Act, unless the context otherwise requires,—

(a) “Court”, when used in relation to a society, means the principal civil court of original jurisdiction of the district within which the registered office of the society is situate and in relation to a society situate within the Presidency town of Calcutta, the City Civil Court established under the City Civil Court Act, 1953 ;

(b) “Governing body” means the body, by whatever name called, entrusted for the time being with the management of a society under its regulations ;

(c) “member”, when used in relation to a society, means a person who has been admitted with his consent as a member of the society according to its regulations ;

(d) “memorandum” means the memorandum of association referred to in Section 4 ;

(e) “officer” means a member of the Governing Body, the President, the Secretary or any other office bearer of a society and includes also an employee of the society whose work is not of a purely ministerial nature ;



- (f) "officer in default", for the purpose of any provision in this Act, means any officer who is knowingly guilty of any contravention, failure or refusal, or who knowingly authorizes or permits such contravention, failure or refusal;
- (g) "President" means the President, the Chairman or the formal head by whatever name called, of a society and includes a person who for the time being acts as the formal head;
- (h) "registered office" means the registered office mentioned in the memorandum;
- (i) "Registrar" means a person appointed as Registrar under Section 3 and includes, in relation to the exercise of any powers or functions under this Act, any person referred to in that section on whom such powers or functions have been conferred under that section;
- (j) "regulations" means the regulations made by a society and, in relation to a society deemed to have been registered under sub-section (2) of Section 36 of this Act and includes its rules and regulations;
- (k) "rules" means rules made by the State Government under Section 35;
- (l) "Secretary" means the Secretary or the principal executive officer, by whatever name called, of a society, and includes a person who for the time being acts as Secretary;
- (m) "society" means a society registered or deemed to have been registered under this Act;
- (n) "votes of three-fifths of the members" means the votes of at least three-fifths of the total number or members of a society, given at a general meeting of the society convened according to its regulations, including votes, by proxy whether voting by proxy is allowed under the regulations.

**3. Appointment of Registrar**—The State Government may appoint a person to be the Registrar of Societies for the State of West Bengal and such Additional, Joint, Deputy or Assistant Registrars as it thinks necessary to assist the Registrar and may by general or special order confer on such person or persons assisting the Registrar any of the powers and functions of the Registrar under this Act.

**4. Societies to be formed by Memorandum of Association and registration**—(1) Any seven or more individuals

associated for any of the objects mentioned in sub-section (2) may subscribe their names to a Memorandum of Association and file it along with a copy of the regulations with the Registrar for registration of the association as a society under this Act.

(2) The objects referred to in sub-section (1) may relate to the promotion of literature, arts science or religion; any charitable purpose including the care or relief of orphans, or of aged, sick, helpless or indigent persons; the alleviation of the sufferings of animals; the diffusion of knowledge; the dissemination of social, political or economic education; the establishment and maintenance of libraries or reading-rooms for the members or for the public; the collection and preservation of manuscripts, paintings, sculptures, works of art, antiquities, natural history specimens, mechanical and scientific instruments and designs; any other object as may be notified by the State Government as being beneficial to the public or to a section of the public.

**5. Memorandum of Association—**(1) The Memorandum shall contain, amongst other things, the following particulars, namely:

- (a) the name of the association,
- (b) the address of the registered office of the association,
- (c) the object of the association,
- (d) the names of the first members of the Governing Body, and
- (e) the names, addresses and occupations of the signatories to the memorandum.

(2) After registration a society shall not change the memorandum except in accordance with the provisions of this Act.

**6. Regulations—**The Registrar shall not accept any memorandum for registration of a society unless it is accompanied by a copy of its regulations providing, amongst other things, for the following matters, namely:

- (a) the composition of the Governing Body and the manner of election or appointment and registration or removal and the term of office of the members of the Governing Body, the President, the Secretary and other officers;
- (b) the admission to membership and resignation and removal of members;
- (c) the maintenance of a register of members and facilities for inspection thereof by the member;
- (d) the safe custody of the property of the society, including

in particular, the manner of keeping or investing any moneys of the society;

- (e) the procedure for holding meetings of the society, quorum, the method of voting, the period of notice for meetings and the manner of voting by proxy, where such voting is allowed;
- (f) the maintenance and audit of accounts;
- (g) the inspection of accounts and of the proceedings of meetings, by the members of the society; and
- (h) any other matter relating to the objects or affairs of the society.

**7. Registration.**—(1) The Registrar upon being satisfied that the memorandum and the regulation accompanying it comply with the requirements of this Act and the rules and upon payment of the fee referred to in sub-section (2), shall certify under his hand and seal that the society is registered under this Act.

(2) There shall be paid to the Registrar, for the registration of a society under this Act, a fee of fifty rupees, or such smaller fee as the State Government may from time to time direct.

(3) An appeal shall lie to the State Government against an order of the Registrar refusing to certify the registration of an association as a society under this Act and the decision on such appeal shall be final.

**8. Alteration of memorandum and regulations.**—(1) A society shall not alter its memorandum except with the previous permission of the Registrar in writing and the votes of three-fifths of its members.

(2) Before granting permission under sub-section (1), the Registrar shall satisfy himself that the alteration does not make the society ineligible for registration under this Act.

(3) Subject to the provisions of this Act, the rules and the provisions of the memorandum a society may, by the votes of three-fifths of the members, alter its regulations.

**9. Alterations to be filed.**—(1) A copy of every alteration of the memorandum and of the regulation shall be filed with the Registrar within thirty days of such alteration.

(2) The Registrar shall, except for special reasons to be recorded by him in writing within thirty days from the date of such receipt, record the alteration and send an intimation of the fact to the society or communicate to the society his objections to such alteration.



(3) An appeal shall lie to the State Government against any objection made by the Registrar and the decision of the State Government on such appeal shall be final.

(4) An alteration shall have effect from the date on which the intimation referred to in sub-section (2) is received by the society or in the event of any objection being raised by the Registrar, from the date on which the State Government allows the alteration on appeal.

**10. Name of society.**—No society shall be registered under a name which is identical with, or too nearly resembles, the name of any other society or any body corporate which has been previously registered or incorporated under this Act or any other law for the time being in force, as the case may be, or is deemed to have been registered under this Act.

**11. State Government may direct change of name.**—(1) If a society is registered under a name or alters its name to another name which, in the opinion of the State Government, is identical with, or too nearly resembles, the name of any other society or body corporate which having been previously registered or incorporated under this Act or any other law for the time being in force, or being deemed to have been registered under this Act, continues to exist the State Government may by order made in this behalf direct such society to change its name and alter its memorandum within three months from the date of the order or such longer period as the State Government may think fit to allow.

(2) No change of name shall affect the rights and liabilities of a society or any legal proceedings by or against the society.

(3) In case of non-compliance with an order under sub-section (1), every officer in default shall be punishable with fine which may extend to twenty rupees for every day until the order is complied with.

**12. Societies to have power to amalgamate with another society.**—(1) Whenever two or more societies desire to amalgamate, the Governing Body of each society shall submit the proposal in writing to the members thereof and such proposal shall be considered in a general meeting of the society convened for the purpose.

(2) No such proposal shall have any effect unless—

(a) it shall have been delivered or sent by registered post to the members of each of the societies at least ten days before the date of the meeting at which it will be considered,

- (b) it has been sent to the Registrar before the meeting and he communicates his approval thereto, with or without any modifications,
  - (c) the proposal, with the modifications, if any, suggested by the Registrar, is agreed to by the votes of three-fifths of the members of each of the societies concerned and confirmed by like votes of members at the subsequent general meeting of the society.
- (3) An appeal shall lie to the State Government against any order of the Registrar refusing to accord his approval to the proposal or suggesting any modification and the decision of the State Government on such appeal shall be final.
- (4) On the proposal being confirmed—
- (a) the amalgamated society shall be registered under its new name,
  - (b) the registration of the amalgamating societies shall be cancelled,
  - (c) the assets and the liabilities of the amalgamating societies shall be the assets and the liabilities of the amalgamated society.

**13. Name of society to be prominently shown.—**(1) Every society shall—

- (a) prominently display its name outside its office or the place where its business is carried on,
  - (b) have a seal with its name engraved thereon,
  - (c) have its name mentioned in all documents executed in its favour or on its behalf.
- (2) For any contravention of the provisions of sub-section (1) every officer in default shall be punishable with fine which may extend to twenty rupees.

**14. Register of members.—**(1) Every society shall maintain at its registered office, a register of its members and shall enter therein the following particulars, namely—

- (a) the name and address of each member,
  - (b) the date on which the member was admitted,
  - (c) the date on which a member ceased to be such.
- (2) If entries are not made within fifteen days of the admission of a member or cessation of membership, every officer in default shall be punishable with fine which may extend to twenty rupees for every day during which the contravention continues.

**15. Books of account and audit.**—(1) Every society shall keep at its registered office proper books of account in which shall be entered accurately—

- (a) all sums of money received and the source thereof and all sums of money expended by the society and the object or purpose for which such sums are expended,
- (b) the assets and liabilities of the society.

(2) Every society shall have its accounts audited once a year by a duly qualified auditor and have a balance-sheet prepared by him. The auditor shall also submit a report showing the exact state of the financial affairs of the society. Three copies of the balance-sheet and the auditor's report shall be certified by the auditor.

*Explanation.*—A duly qualified auditor means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 or a person approved by the Registrar in this behalf.

(3) For any contravention of the provisions of sub-section (1) or sub-section (2), every officer in default shall be punishable with fine which may extend to twenty rupees for every day after the detection of the default during which the default continues.

**16. Annual general meeting.**—(1) Every society shall hold an annual general meeting at least once in every year and not more than fifteen months shall elapse between two successive annual general meetings.

(2) The balance-sheet and the auditor's report referred to in sub-section (2) of Section 15 shall be placed at the annual general meeting of the society.

(3) For any contravention of the provisions of sub-section (1), or sub-section (2), every officer in default shall be punishable with fine which may extend to two hundred and fifty rupees.

**17. Annual and other returns to be forwarded to Registrar.**—(1) Within thirty days after the holding of every annual general meeting, there shall be filed with the Registrar—

- (a) a list of the names, addresses and occupations of the members of the Governing Body, the President, the Secretary and of other office-bearers of the society,
- (b) an annual report by the Governing Body on the working of the society for the previous year,
- (c) a copy each of the balance-sheet and the auditor's report certified by the auditor under sub-section (2) of Section 15.



(2) The list and the annual report referred to in clauses (a) and (b) of sub-section (1) shall be certified by the President and the Secretary.

(3) If any change occurs in the composition of the Governing Body or in the holder of the office of the President or the Secretary at any time for any reason whatsoever, change shall, within thirty days, be notified to the Registrar.

(4) For any contravention of the provisions of sub-section (1), sub-section (2) or sub-section (3), every officer in default shall be punishable with fine which may extend to two hundred and fifty rupees.

**18. Property of society how to be vested.**—All property belonging to a society, if not vested in trustees, shall be deemed to be vested in the Governing Body of the society but shall be referred to as the property of the society.

**19. Suits and proceedings by and against a society.**—(1) Every society may sue or may be sued in the name of the President, the Secretary, or any office-bearer authorised by the Governing Body in this behalf.

(2) No suit or proceeding shall abate by reason of any vacancy or change in the holder of the office of the President, the Secretary or any office-bearer authorised under sub-section (1).

(3) Every decree or order against a society in any suit or proceeding shall be executable against the property of the society and not against the person or the property of the President, the Secretary or any office-bearer.

(4) Nothing in sub-section (3) shall exempt the President, the Secretary or office-bearer of a society from any criminal liability under this Act or entitle him to claim any contribution from the property of the society in respect of any fine paid by him on conviction by a criminal court.

**20. Power to alter regulations.**—(1) Subject to the provisions of this Act and the rules a society may by the votes of three-fifths of the members add to or amend the regulations relating to its objects or affairs.

(2) A copy of such additions or amendments to the regulations shall be filed with the Registrar within thirty days after they are made.

**21. Members liable to be sued or prosecuted as strangers.**—Every member of a society may be sued or prosecuted by

the society for any loss or damage caused to the society or its property or for anything done by him detrimental to the interests of the society.

**22. Power of Registrar to call for information or explanation.**—(1) The Registrar may, by written order, call on a society to furnish in writing such information or explanation within such time, not being less than two weeks from the date of receipt of the order by the society, as he may specify in the order in connection with the affairs of the society or any documents filed by the society under this Act.

(2) On receipt by the society of an order under sub-section (1), it shall be the duty of the officer concerned to furnish such information or explanation.

(3) For failure to comply with an order under sub-section (1) the officer in default shall be punishable with fine which may extend to twenty rupees for every day during which the failure continues.

**23. Investigation of affairs of society.**—(1) Where on information received, the State Government is of opinion that there are circumstances suggesting that the business of a society is being conducted with intent to defraud its creditors, members or any other person, or that the society is guilty of mismanaging its affairs or of any fraudulent or unlawful act, the State Government may appoint a competent person as Inspector to investigate into the affairs of the society or inspect any institution managed by the society and report on such matters as the State Government may direct.

(2) It shall be the duty of every officer of the society when so required by the Inspector to produce any books and papers of or relating to the society which are in his custody, and otherwise to give to the Inspector all assistance in connection with the investigation or inspection which he is reasonably able to give.

(3) An Inspector may call upon and examine on oath any officer of the society in relation to the affairs of the society and it shall be the duty of every officer when so called upon to appear before the Inspector for such examination.

(4) On the conclusion of the investigation or inspection, as the case may be, the Inspector shall make a report to the Registrar, on the matters on which he was directed by the State Government to report.

(5) For refusal to comply with the provisions of sub-section (2) or sub-section (3), the officer in default shall be punishable with fine which may extend to two hundred and fifty rupees.

(6) The Registrar shall send the report with his comments thereon to the State Government. On perusal of such report and comments of the Registrar the State Government may give such directions as it may think fit to the society for the removal of any defects or irregularities within such time as may be specified and on the society making any default in taking action according to such directions the State Government may direct the Registrar to move the Court for dissolution of the society.

(7) If on a perusal of the report and the comments of the Registrar, it appears to the State Government that any person has, in relation to the formation, promotion, management or conduct of the business of the society, been guilty of any offence for which he is criminally liable, the State Government may direct the prosecution of such person for the offence.

(8) The expenses of, and incidental to, an investigation by an Inspector appointed by the State Government shall be defrayed by the State Government.

**24. Dissolution by resolution.**—(1) A society may be dissolved if by the votes of three-fifths of the members it passes a resolution for such dissolution at a general meeting convened for the purpose.

(2) Where a resolution for dissolution of a society is passed under sub-section (1), the Governing Body shall take such steps for the disposal and settlement of the property of the society and its claims and liabilities as it may think fit subject to the regulations of the society, if any.

(3) After all necessary steps have been taken under sub-section (2), the Governing Body shall send a report to the Registrar mentioning if there are any surplus assets.

(4) The Registrar shall thereupon issue a notice in the *Official Gazette* to the effect that if no objection is received from any claimant, or creditor or any member of the society within three months from the date of the notice, the society shall, subject to the provisions of Section 27, be dissolved.

(5) If no objection is received within three months as aforesaid, and after the surplus assets, if any, have been disposed of as provided in Section 27, the Registrar shall make an order confirming the dissolution of the society and thereupon the society shall stand dissolved. The Registrar shall record the order of dissolution in the register maintained in his office.

(6) If any objection is received from any claimant or creditor within the period of three months as aforesaid the Registrar shall not make an order confirming the dissolution of the society unless



he is satisfied that the relevant claim or liability has been duly settled and the surplus assets, if any, have been disposed of as provided in Section 27. If however any objection is received from any member the Registrar shall not make an order confirming the dissolution of the society but shall make an application to the Court under Section 25.

(7) Where any Government has made in any manner any contribution to the funds or other assets of a society, such society shall not be dissolved, unless the State Government has given its assent to the dissolution.

**25. Dissolution by Court.**—(1) The Court may, on the application of the Registrar or on the application of not less than one-tenth of the members, make an order for the dissolution of a society in the following cases—

- (a) if there is any contravention by the society of the provisions of this Act,
- (b) if the number of members is less than seven,
- (c) if the society has ceased to function for more than three years,
- (d) if the society is unable to pay its debts or meet its liabilities,
- (e) if it is proper that the society should be dissolved.

(2) When an order for the dissolution of a society is made by the Court, dissolution shall take place in such manner as the Court may direct.

**26. Dissolution by Registrar.**—(1) Where in the opinion of the Registrar there are reasonable grounds to believe that a society is not managing its affairs properly or is not functioning, he shall send to the society at its registered office a notice by registered post calling upon it to show cause within such time as may be specified in the notice why the society shall not be dissolved.

(2) If no cause is shown or if the cause shown be considered by the Registrar to be unsatisfactory the Registrar may move the Court under Section 25 for making an order for the dissolution of the society.

**27. Members to receive no profit upon dissolution.**—If after the disposal and settlement of the property of a society and its claims and liabilities, there are any surplus assets, such assets shall not be paid to or distributed amongst the members of the society or any of them but shall be given to some other society to be determined—

- (a) in the case of a dissolution under Section 24, by the

votes of three-fifths of the members, or in default thereof, by the Registrar, with the approval of the State Government;

(b) in the case of a dissolution under Section 25, by the Court.

**28. Restriction on holding office.**—No person who is an undischarged insolvent or who has been convicted of any offence in connection with the formation, promotion, management or conduct of the affairs of a society or of a body corporate, or of any offence involving moral turpitude, shall be entitled to be a member of the Governing Body or the President, Secretary, or any office-bearer of a society.

**29. Inspection of documents and grant of certified copies thereof.**—Any person may inspect any document filed with the Registrar under this Act on payment of a fee of one rupee for every inspection; and any person may obtain a copy or extract of any document or any part of any document, certified by the Registrar, on payment of such fee as may be prescribed. Such certified copy shall be admissible as evidence of the matters therein contained in all legal proceedings.

**30. Terms of gift to be observed.**—(1) Where a society accepts a gift of any kind from any person for a specific purpose it shall not use the gift or any part thereof for any other purpose without the written consent of the donor or if the donor be dead, without the written consent of the Registrar. The Registrar shall not give such consent unless he is satisfied that the purpose for which the gift was made is incapable of execution by the society.

(2) For any contravention of the provisions of sub-section (1), every officer in default shall be punishable with fine which may extend to two hundred and fifty rupees.

**31. Communications with a society.**—All communications with a society shall be addressed to the society by name and sent to its registered office.

**32. No prosecution to be instituted without previous sanction.**—(1) No prosecution shall be instituted for any offence under this Act except with the previous sanction of the State Government.

(2) Nothing in sub-section (1) shall apply to any prosecution mentioned in Section 21.

**33. Indemnity.**—No suit, prosecution or proceeding shall lie in any Civil or Criminal Court against the Registrar or against

any Inspector appointed under Section 23, and no suit or proceeding shall lie in any Civil Court against the State Government, for anything in good faith done or intended to be done under this Act or the rules.

**34. Limitation.**—(1) An appeal under this Act may be filed within thirty days of the date of the objection or order appealed against.

(2) The provisions of Sections 5 and 12 of the Indian Limitation Act, 1908, shall apply to any appeal under this Act.

**35. Power to make rules.**—(1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

- (a) the procedure for any appeal under this Act to the State Government and the fee for such appeal, if any,
- (b) the fee, if any, to be paid for filing any document, other than the memorandum and the regulations under sub-section (1) of Section 4,
- (c) the maintenance of the register of societies and other books, if any, by the Registrar,
- (d) the fee to be paid for obtaining any copy or extract of any document certified by the Registrar.

(3) All fees paid under this Act shall be credited to the Consolidated Fund of the State.

**36. Repeal and savings.**—(1) The Societies Registration Act, 1860, in its application to West Bengal, is hereby repealed.

(2) Any society registered in any place within West Bengal under the Societies Registration Act, 1860, shall be deemed to have been registered under this Act, and its principal office shall be deemed to be the registered office of the society :

Provided that—

- (a) the Memorandum of Association and the regulations of any such society shall, if they are repugnant to any of the provisions of this Act and the rules, be brought in conformity therewith within six months from the commencement of this Act or within such further period as the Registrar may allow, and thereafter shall to the extent of such repugnancy be deemed to be void and of no effect,



- (b) any officer elected or appointed to an office before the commencement of this Act and holding such office immediately before such commencement shall continue to hold such office until the expiry of his term of office or until such office is lawfully terminated,
- (c) nothing in this section shall affect—
  - (i) any right, privilege, obligation or liability acquired, accrued or incurred under the Societies Registration Act, 1860,
  - (ii) any penalty or punishment incurred in respect of any offence committed under the said Act,
  - (iii) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid,
  - (iv) any proceedings in dissolution commenced before the coming into force of this Act, and

any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty or punishment may be imposed and any such proceedings in dissolution may be continued as if this Act had not been passed.

## THE MADHYA PRADESH SOCIETIES REGISTRATION ACT, 1959<sup>1</sup>

(M. P. ACT No. 1 OF 1960<sup>2</sup>)

*An Act to consolidate and amend the law relating to the registration of literary, scientific and charitable societies in Madhya Pradesh*

Be it enacted by the Madhya Pradesh Legislature in the Tenth Year of the Republic of India as follows :—

**Statement of Objects and Reasons.**—At present the position regarding the law relating to the registration of the societies in the different regions of the New State of Madhya Pradesh is as follows :—

In Mahakoshal, Vindhya Pradesh, Bhopal and Sironj regions, the Societies Registration Act, 1860 (XXI of 1860) is in force while in the Madhya Bharat region, the M. B. Societies Registration Act, 1950, Samvat 2007 (No. 55 of 1950), is in force. Both under the Societies Registration Act, 1860 (which is a Central Act) and the M. B. Societies Registration Act, 1950, the Registrar of Joint Stock Companies appointed under the Companies Act is also Registrar of Societies in the operation of the Societies Registration Act. In order to enable the State Government to take over the work relating to the registration of societies the Societies Registration Act, 1860, and the M. B. Societies Registration Act, 1950, will have to be amended. It is therefore proposed to have one consolidated uniform law for the whole of the State of Madhya Pradesh in place of the existing different pieces of legislation on the subject, hence this Bill.

**1. Short title, extent and commencement.**—(1) This Act may be called the Madhya Pradesh Societies Registration Act, 1959.

(2) It extends to the whole of Madhya Pradesh.

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1. For Statement of Objects and Reasons (in English) see M. P. Gazette Extraordinary, dated the 25th April 1959. For proceedings in Assembly, see M. P. Vidhan Sabha, Proceedings, 1959 Volume VI, pages 99—104.
  2. Received the assent of the Governor on the 21st December, 1959, assent first published in the Madhya Pradesh Gazette on the 1st January, 1960.

(3) It shall come into force on such date<sup>3</sup> as the State Government may, by notification, appoint in this behalf.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

- (a) “Registrar” means the Registrar of Societies appointed under sub-section (1) of Section 3 and includes an Assistant Registrar of Societies appointed under sub-section (2) of the said section when exercising or performing all or any of the powers or duties of the Registrar;
- (b) “Registered Society” means a society registered under this Act;
- (c) “Regulations of a society” means registered regulation for the time being in force.

**3. Registrar of Societies and Assistant Registrars.**—(1) The State Government may, by notification, appoint a person to be called the Registrar of Societies who shall exercise such powers and shall perform such duties and functions as are conferred by or under the provisions of this Act and shall, subject to such general or special orders as the State Government may make, superintend the administration and carry out the provisions of this Act throughout the State.

(2) The State Government may also by like notification appoint persons to be called Assistant Registrars of Societies for such areas as may be specified in the notification and empower them to exercise powers and to perform duties under all or such provisions of this Act as may be specified in the notification.

**4. Societies formed by Memorandum of Association and registration.**—Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in Section 31, may by subscribing their names to a Memorandum of Association and filing the same with the Registrar, form themselves into a society under this Act.

**5. Requirements with respect to Memorandum of Association.**—(1) The Memorandum of Association of every society shall state—

- (a) the name of the society;
- (b) the objects of the society;
- (c) the location of the head office of the society;

3. The Act came into force on the 15th August, 1961, see Government of M.P. Commerce and Industries Department, Notification No. 10971—2729-XI-13, dated the 21st July, 1961, published in the Madhya Pradesh Gazette, dated the 4th August, 1961, Part 1, page 1274.



(d) the names, addresses and occupations of the governors, council, directors, committee or other governing body to whom by the regulations of the society the management of its affairs is entrusted.

(2) A copy of the regulations of the society, certified to be a correct copy by not less than three of the members of the governing body shall be filed with the Memorandum of Association.

(3) The persons by whom or on whose behalf such memorandum is submitted shall furnish such further information in regard to the society as the Registrar may require.

**6. Registration.**—(1) If the Registrar is satisfied that a society has complied with the provisions of this Act, and the rules made thereunder and that its proposed regulations are not contrary to the said provisions, he shall register the society and its regulations on payment of such fee as may be prescribed and shall issue a certificate of registration.

(2) A society registered before the commencement of this Act under any of the enactments repealed under Section 35 shall be deemed to have been registered under this Act.

**7. Evidence of registration.**—A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled.

**8. Regulation of society.**—The regulations of a society may provide for,—

- (i) the conditions of admission of members ;
- (ii) the liability of members to fines and forfeitures under certain circumstances ;
- (iii) the consequences of non-payment of any subscription or fine, the resignation and expulsion of members ;
- (iv) the appointment and removal of trustees and their powers ;
- (v) the manner of appointing and removing the governing body and the powers of such body ;
- (vi) the time and place of annual meeting and other meetings of the society ;
- (vii) the manner in which notice of such meeting may be given ;
- (viii) the quorum necessary for the transaction of business at meetings of the society ;
- (ix) the manner of making, altering and rescinding regulations ;

- (x) the investment of funds, keeping of accounts and for an annual or periodical audit of accounts;
- (xi) the manner of dissolving the society;
- (xii) the determination after dissolution that property be utilised by Government according to Section 27;
- (xiii) matter to be provided by bye-laws and the manner in which they shall be made; and
- (xiv) such other matters as may be thought expedient, having regard to the nature and objects of the society.

**9. Amendments of regulations or bye-laws of registered society.**—(1) No amendment of the regulations of a registered society shall be valid until the amendment has been registered under this Act.

(2) Every proposal for such amendment shall be forwarded to the Registrar and if the Registrar is satisfied that the amendment is not contrary to this Act or to the rules made thereunder, he may, if he thinks fit, register the amendment.

(3) Where an amendment is registered under sub-section (2), the Registrar shall issue to the society on payment of a fee specified in Section 30 a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.

**10. Change of name of society.**—Subject to the provisions of Section 11, any registered society may, with the consent of not less than two-thirds of the total number of its members by a resolution at a general meeting convened for the purpose, change its name.

**11. Notice of change of name.**—(1) A copy of the resolution passed under Section 10 shall be sent to the Registrar.

(2) If the proposed name is identical with or too nearly resembles the name by which any society in existence has been previously registered under this Act or under any of the enactments repealed under Section 35 or in the opinion of the Registrar the proposed name is likely to mislead the public, the Registrar shall refuse to register the change of name.

(3) If the Registrar is satisfied that the provisions of this Act in respect of change of name have been complied with and that the proposed name is not undesirable on any of the grounds specified in sub-section (2), he shall enter the new name on the register in place of the former one and issue a certificate of registration with necessary alterations embodied therein, and

the change of name shall be completed and effective only on the issue of such a certificate.

(4) The Registrar shall also make the necessary alteration in the Memorandum of Association of the Society.

(5) The Registrar shall charge a fee of rupee one for any copy of certificate issued under sub-section (3) and all fees so paid shall be accounted for to the State Government.

**12. Effect of change of name.**—The change in the name of a society shall not affect any rights or obligations of either the members who were admitted prior to the change or of the society or render defective any legal proceeding by or against the society.

**13. Annual list of managing body to be filed.**—Once in every year, a list of the full names, permanent addresses and chief occupations and others, if any, of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society shall be filed with the Registrar by the President, Secretary or any other person authorised in this behalf by the governing body of the society :

Provided that the Registrar may, for reasons to be recorded in writing, grant further time not exceeding thirty days for the compliance of this section.

**14. Penalty for non-compliance of Section 13 or making false entry.**—(1) If the President, Secretary or any other person authorised in this behalf by a resolution of the governing body of the society fails to comply with the provisions of Section 13 he shall, on conviction, be punishable with fine which may extend to five hundred rupees and in case of continuing breach, shall also be punishable with fine not exceeding fifty rupees for each day during the period the breach continues after first conviction for such offence.

(2) If any person wilfully makes or causes to be made any false entry in or any omission from, the list required by Section 13 or in or from any statement or copy of rules or alterations in rules sent to the Registrar he shall, on conviction, be punishable with fine which may extend to two thousand rupees.

**15. Cognizance of offence.**—(1) No court inferior to that of a Magistrate of the First Class shall try an offence punishable under this Act.

(2) No court shall take cognizance of an offence punishable under this Act except upon complaint made by the Registrar or any other person, authorised in writing by him, in this behalf.



**16. Property of Society how vested.**—The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested for the time being in the governing body of such society and in all proceedings civil and criminal, may be described as the property of the governing body of such society by their proper title.

**17. Suit by and against societies.**—Every society registered under this Act may sue or be sued in the name of the President, Chairman or principal Secretary or the trustees, as shall be determined by the regulations of the society and in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion :

Provided that it shall be competent for any person having a claim or demand against the society to sue the President or Chairman or principal Secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

**18. Suit not to abate.**—No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

**19. Enforcement of judgment against society.**—(1) If a judgment shall be obtained against the person or officer named on behalf of the society, such judgment shall not be enforced against the property, movable or immovable, or against the body of such person or officer, but against the property of the society.

(2) The application for execution shall set forth the judgment, the fact of the party against whom it shall have been obtained, having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

**20. Recovery of penalty accruing under bye-law.**—Whenever by any bye-law duly made in accordance with the regulations of the society and pecuniary penalty is imposed for the breach of any regulations or bye-law of the society such penalty, when accrued, may be recovered in any court, having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

**21. Members liable to be sued as strangers.**—(1) Any member of a registered society who may be in arrear of a subscription which according to the regulations of the society he is

bound to pay, or who shall possess himself of or detain any property of the society in a manner or for a time' contrary to such regulations or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such detention, injury or destruction of property in the manner herein before provided.

(2) If the defendant shall be successful in any suit or other proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society and in the latter case shall have process against the property of the said society in the manner above described.

**22. Members guilty of offences punishable as strangers.**—Any member of the society, who shall steal, purloin or embezzle any money or other property or wilfully and maliciously destroy and injure any property of such society or shall forge any deed, bond, security for money receipt or other instrument, whereby the funds of the society may be exposed to loss shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner as any person other than a member would be subject and liable to in respect of the like offence.

**23. Societies enabled to alter, extend or abridge their purposes.**—Whenever it shall appear to the governing body of any registered society, which has been established for any particular purpose or purposes that it is advisable to alter, extend or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society:

Provided that no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, and unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

**24. Audit and inspection.**—(1) At the end of every year a registered society shall send the statements of income and



expenditure with full particulars duly audited by its auditors to the Registrar. On receipt of such statements the Registrar shall verify these statements with a view to society and its object and he may issue such instructions to the society in this connection, as he may think fit.

(2) If the Registrar thinks necessary to undertake a special audit he may audit or cause to be audited by some person authorised by him by general or special order in writing in this behalf the accounts of any registered society.

(3) Any person authorised by general or special order in writing in this behalf by the Registrar shall at all times have access to all the books of accounts and other papers of a society and every officer of the society shall furnish such information in regard to the accounts and working of the society as the person making such inspection may require.

**25. Provision for dissolution of societies and adjustment of their affairs.**—Any number not less than three-fifths of the members of any society may determine that it shall be dissolved and thereupon it shall be dissolved forthwith, or at the time when agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of society, its claims and liabilities according to the regulations of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient:

Provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situated, and the Court shall make such order in the matter as it shall deem fit:

Provided further that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose:

Provided also that whenever the Government is a member of, or a contributor to, or otherwise interested in any society registered under this Act, such society shall not be dissolved without the consent of the Government:

**26. Upon dissolution no member to receive profit.**—If upon the dissolution of any registered society, there shall remain after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid or distributed among the members of the said society or any of them but shall be given to some other society, to be determined by the votes of not



less than three-fifths of the members present personally or by proxy at the time of the dissolution or in default thereof by the Court specified in Section 25 :

Provided, however, that this section shall not apply to any society which shall have founded or established by the contributions of shareholders in the nature of Joint Stock Company.

**27. Determination after dissolution that property be utilised by Government.**—Notwithstanding anything contained in Section 26 it shall be lawful for the member of any society dissolved under Section 25 to determine by majority of votes of the members present personally or by proxy at the time of dissolution of such society that any property whatsoever remaining after satisfaction of all its debts and liabilities shall be given to Government to be utilised for any of the purposes referred to in Section 4 of this Act.

**28. Member defined.**—For the purposes of this Act a member of a society shall be a person who having been admitted therein according to the regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof and shall not have resigned in accordance with such regulations; but in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.

**29. Governing body defined.**—The governing body of the society, shall be the governors, council, directors, committee, trustees, or other body to whom by the regulations of the society management of its affairs is entrusted.

**30. Inspection of documents.**—Any person may inspect all or any of the documents filed with the Registrar under this Act on payment of a fee of one rupee for each inspection; and any person may require a copy or extract of any document, to be certified by the Registrar on payment of fifteen naye paise for every hundred words of such copy or extract; and such certified copy shall be *prima facie* evidence of matters therein contained in all legal proceedings whatsoever.

**31. To what societies Act applies.**—The following societies may be registered under the Act; charitable societies, the military orphan funds or societies established for the promotion of science, literature or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public or public museums and galleries

of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

**32. Power of Registrar to make enquiries and investigation.**—The Registrar may, in his discretion, institute such enquiry or make such investigations in respect of any matter as may, in his opinion be necessary for the proper performance of his duties and the administration of the Act or for the settlement of any dispute arising with respect to any registered society.

**33. Pending proceedings and construction of references to Registrar of Companies in instruments issued or made before this Act.**—(1) All proceedings under the Societies Registration Act, 1860 (XXI of 1860), and the Madhya Bharat Societies Registration Act, Samvat 2007 (53 of 1950) pending before the Registrar of Companies, or the Registrar of Joint Stock Companies, as the case may be, at the date of the commencement of this Act shall stand transferred to the Registrar of Societies and any such proceeding shall be continued and disposed of by the Registrar or by such Assistant Registrar of Societies as the Registrar of Societies may direct, as if it had been originally instituted before such Registrar or Assistant Registrar, as the case may be, under this Act.

(2) In all certificates of registration and in all rules, regulations and bye-laws of societies and all other instruments issued or made under the Societies Registration Act, 1860 (XXI of 1860), or the Madhya Bharat Societies Registration Act, Samvat 2007 (53 of 1950), before the commencement of this Act any reference to the Registrar of Joint Stock Companies or the Registrar of Companies shall be deemed to be and be construed as a reference to the Registrar of Societies.

**34. Power to make rules.**—The State Government may make rules to carry out the purposes of this Act.

**35. Repeal and saving.**—(1) As from the commencement of this Act, the Societies Registration Act, 1860 (XXI of 1860) in its application to Mahakoshal, Vindhya Pradesh and Bhopal regions, the Rajasthan Adaptation of Central Laws Ordinance, 1950 (IV of 1950), so far as it relates to the Societies Registration Act, 1860 (XXI of 1860), in its application to Sironj region and the Madhya Bharat Societies Registration Act, Samvat 2007 (53 of 1950) shall stand repealed.

(2) Notwithstanding such repeal anything done or deemed to have been done or any action taken or deemed to have been taken in exercise of the powers conferred by or under the Act or Ordinance so repealed shall, in so far as it is not inconsistent with the express provisions of this Act, be deemed to have been done or taken in exercise of the powers conferred by or under this Act.

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